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CONSTITUTIONAL HISTORY OF
MEDIEVAL ENGLAND

By B. Wilkinson, M.A., Ph.D.

CONSTITUTIONAL HISTORY OF MEDIEVAL
ENGLAND 1216-1399

Volume I *Politics and the Constitution*
1216-1307

Volume II *Politics and the Constitution*
1307-1399

In Preparation

Volume III *The Development of the Con-
stitution 1216-1399*

CONSTITUTIONAL HISTORY OF MEDIEVAL ENGLAND

1216-1399

VOLUME II

Politics and the Constitution 1307-1399

by

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The most high and absolute power of the realme of Englande consisteth in the parliament¹ . . . which is the whole universall and generall consent and authoritie aswell of the prince as of the nobilitie and commons, that is to say, of the whole head and bodie of the realme of England.²

¹ Sir Thomas Smith, *De Republica Anglorum*, ed. L. Alston (Cambridge, 1906), 48.

² *Ibid.*, 63. These two passages are far apart, but they are complementary to each other.

PREFACE

IT is perhaps again necessary, for the benefit of students, to emphasize the fact that this interpretation of the fourteenth century is purely tentative and offered largely for the purpose of letting the student form his own opinion about the problems involved. Nobody can be dogmatic about the answers. Intensive research into the problems of the fourteenth century has hardly yet begun. Our more fortunate successors in the period will go forward to deep and rich interpretations which we cannot, as yet, begin to perceive. But even in our imperfect knowledge, it seems likely, we know enough to realize that this great century has a very special significance in history. Perhaps this can best be summed up as the achievement of political creativeness combined with a fidelity to the deepest political traditions. Its lesson, if it has any lesson, is that of progress without impairment of continuity; it is the transformation, without the destruction, of the great institutions of political life.

This volume has proved to be somewhat longer than was intended. There are, unfortunately, more footnotes than in Volume I. This is mainly because there has been more need for original interpretation; but that hardly lessens the obligation throughout to numerous contemporary historians. The very bulk of the recent research has prevented it from receiving full justice in the chapters which follow. There is all the more need for the student to read as much as possible for himself. With regard to these chapters, a warning should perhaps be repeated here against taking the emphasis on political crises to indicate that the essential relationship between the king and his subjects was one of conflict.¹ Finally, attention should be drawn to a

¹ On the other hand, a friendly reviewer of Volume I (*The Cambridge Journal*, III, Jan. 1950, 243-4) suggested that I explained such conflict away.

problem which is as fascinating as it is obscure; but which I cannot pretend to have dealt with adequately in the pages which follow. This is the extent to which the political and constitutional issues raised in the struggles of the century were as clear to the participants in those struggles as I have tried to make them below.

There will no doubt be many imperfections in this volume, which covers a difficult period. Errors would certainly have been more numerous but for the generous help I have received during its preparation. My wife has once more given me her companionship and help from the beginning to the end of the volume. Professor G. Flahiff has, through old friendship, allowed me to impose on him, as in Volume I, the burden of reading the proofs. I am deeply indebted to Dr. N. B. Lewis and Mr. M. R. Powicke for reading the MS. I am grateful for all this friendly co-operation, though it is only proper for me to take responsibility for the errors which remain. I seem to have uncovered more problems in the course of my discussion of the century than I have succeeded in solving; but, if I prove to have stimulated discussion of this most fascinating¹ and important period of history, I shall be very well content.

Toronto

B. WILKINSON

¹ Profesor T. F. T. Plucknett's "The Impeachments of 1376," in *Transactions of the Royal Hist. Soc.* (Fifth Series), I (1951), 153-64, appeared too late to be used in the discussion below.

INTRODUCTION

I

THE fourteenth century established the outlines of the modern English state just as the thirteenth had established its foundations. It finally translated the medieval traditions of government by counsel and consent under the supremacy of law into the framework of limited monarchy. This was a unique achievement. All over Western Europe, the tide was running the other way. In most countries, the emergence of the national state so strengthened the hands of the ruler as to lead towards absolutism. As a result, had it not been for the balanced English constitution, the full legacy of the medieval political tradition might never have been successfully handed on. It was the highest destiny of England to provide an unbroken evolution from feudalism to democracy.

The triumph of limited monarchy in fourteenth-century England was no accident. Deep forces were working in its favour. The great political decisions and precedents of the thirteenth century were on its side. So were the traditions of law and the social structure of the English people. The divisions between the classes were much weaker in England than, for instance, in Germany. They permitted, even encouraged, common action between Lords and Commons and effective unity between burgesses and knights of the shire. English geography, as well as history, continued to favour her evolution. Her physical insularity helped her, as of old, to fight most of her wars on foreign soil. Her comparative security enabled her people to profit by the needs of the ruler rather than be dependent upon his strength. The economy of the country could prosper to produce sturdy middle classes in the shire and in the city, strong enough to avoid either undue dependence on the

national monarch or subservience to the aristocracy. The monarch, in England, was not able to exploit any one class against the others, though perhaps Edward III tried to; nor were the magnates strong enough to aim at a tyranny of their own. Circumstances combined to enhance rather than to weaken the unity of England which had been firmly established in the thirteenth century, on the basis of a partnership between the king and community. They offered a firm basis for the development of constitutional monarchy which perpetuated some of the deepest political traditions of the age.

Yet the triumph of limited monarchy was not a simple and inevitable expression of these traditions. On the contrary, it involved a political revolution as difficult as, and even more complicated than, that of the age of Henry III. It involved very far-reaching changes, both institutional and ideological, one or two of the most important of which should perhaps be indicated at the beginning of this work.

All, or nearly all, were connected with the rise of the national state, and its influence on the relations between the community and the king. The national state continued to bring accessions of power both to the monarch and to the people. On the one hand, the growth of centralization, the expansion of bureaucracy, the development of commerce, and the rise of nationalism, all increased the strength of the ruler. On the other hand, the evolution of "bastard" feudalism, the organization of estates on the model of the central government, new methods of warfare and military service, and developing methods of political action, expanded the powers and perhaps the pretensions of the aristocracy. Alongside the king and the magnates, changing social and economic conditions brought a new section of the nation to political consciousness and influence. This was the middle class of knights of the shire and burgesses. Its rise, in the national state, had already been a conspicuous feature of thirteenth-century politics; it became a dominant feature of the fourteenth. Though the influence of the Commons in the latter century has perhaps been exaggerated, it can be argued that it was sufficient to make them a decisive factor

in the political relationships between the community and the king.¹

The political consequences of these changes were extremely important. On the one hand, they developed in England, as abroad, a tendency towards absolutism. The monarch increasingly asserted a claim to the obedience of all his subjects. This strongly affected even the church. Perhaps the true origin of the Erastianism of Henry VIII is to be found in the reign of Edward III. The ecclesiastics looked more and more to the ruler for protection against the claims of the Papacy. Provisors and Praemunire, the promotion of ministerial prelates, the taxation of the clergy, the appropriation of alien priories and attacks on the wealth of the clergy, paved the way for the acts of Annates and Royal Supremacy of the Reformation. Even John Wyclif, in spite of his belief in the *Respublica Christiana*, was a strong proponent of the royal power. Before the end of the century the ideals of the universal Church were obviously paling before those of the national state. The increasing dependence of the clergy on the ruler made it impossible for them to continue the mediatory and independent outlook of the thirteenth century. The last clear exponents of this outlook were the members of the Middle Party.² After that, the prelates of England tended to be absorbed into the nation's political life. For the most part, though with notable exceptions, they supported the royal power.

On the other hand, the changes encouraged the political ambitions of the subjects. Helped by the institutional development,³ the latter aspired, in the end, to parliamentary powers which gave them in effect a control over the government. The

¹ A different assessment of the political importance of the Commons at this period has been made by H. G. Richardson, "The Commons in Medieval Politics," in *Trans. Royal Hist. Soc.* (4th series), XXVIII, 1946, 21-45.

² B. Wilkinson, "The Negotiations Preceding the 'Treaty' of Leake in August 1318," in *Studies in Medieval History Presented to F. M. Powicke*, edited by R. W. Hunt, W. A. Pantin and R. W. Southern (Oxford, 1948), 333-53.

³ B. Wilkinson, *Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries* (Manchester, 1937), 269-72.

real basis of their strength was a unity which the national state engendered. It was the twin alliance, already adumbrated in the days of Simon de Montfort, firstly between the knights and burgesses, secondly between the Commons and the Lords. Neither of these alliances was clearly dictated by medieval ideas and conditions, and neither occurred so completely in any other state. They were a peculiar product of the English background and history, already touched upon; but they were consolidated in this decisive period of change. It was through them, above all, that the ambitions of the subjects rather than of the monarch ultimately prevailed.

Thus the national order weakened the feudal hierarchy, brought monarch and nation face to face, and provided each with the institutional means of controlling the state. There arose a clash which, borrowing from Gierke and Kern, I have ventured to call a clash of "sovereignties." Modern notions of sovereignty were, of course, quite unknown in the Middle Ages. No theory of the sovereignty of the people would have been acceptable in medieval England, and none was ever propounded. The use of this expression may be regarded as misleading. Nevertheless, it is convenient and it corresponds roughly, if not with theories, at least with realities. The term will accordingly be employed in this volume, with all the appropriate reservations. A clash of "sovereignties" can, with these reservations, be regarded as the greatest single political issue of the period, whose outcome would determine the structure of the English state.

The solution to this problem was the century's greatest political achievement, determining all future political growth. It was to be discovered neither in the sovereignty of the ruler nor in the sovereignty of the people, but in their reconciliation with each other in the structure of limited monarchy. In the end, neither king nor community would dominate the government entirely, but they would dominate it together, as the king-in-parliament. This was, in one sense, a simple continuation of medieval political traditions and an expansion of the partnership in government already achieved in the thirteenth cen-

tury.⁴ In another sense, it was the achievement of a political revolution, necessitating very far-reaching changes both in the institutions of government and in the habits of political thought.

This revolution entailed, in the first place, a great extension of the share of the community in the business of government. Edward I, though he had made great concessions, had still clung to the traditions of personal monarchy. He had kept both initiative and ultimate control in the hands of the ruler. The co-operation of the nation was essentially in the form of consent. Moreover, both he and his subjects had accepted the feudal concept that high matters of policy were matters which concerned, at the most, the king and the great magnates. *Quod omnes tangit* had expressed a principle of co-operation, but it was one that excluded much of the nation from matters which were not considered to be their proper interest. Thus there was only a limited partnership of the community in the government and an even more limited concept of what the 'community of England' implied. What the new revolution entailed was not only an expansion of the share of the 'nation' in the business of government, but also an expansion of the 'nation' finally and completely to include the Commons as well as the Lords.

The great impact of this expansion was on the institution of parliament. It involved both a great increase in parliamentary business and the acceptance of the Commons as a necessary element in a "full" parliamentary assembly, participating in all, or substantially all, parliamentary affairs. How this came about has never, for a variety of reasons, been precisely determined; but it seems to have been almost completely accomplished before the death of Edward III. From that point, Lords and Commons could act together in parliament with a common interest in important business of government; and the history of the modern assembly, consisting of King, Lords and Commons may be said to have begun.

This expansion was accompanied by a far-reaching revision

⁴ See Volume I of this work, and my essay on "The 'Political Revolution' of the Thirteenth and Fourteenth Centuries in England," in *Speculum*, XXIV (Oct. 1949), 502-10.

of parliamentary procedure. The most important aspect of this, perhaps, was the transformation of the process of legislation, by the development of petitions by the Commons and later by the evolution of agreed parliamentary bills by the Commons and the Lords. Whatever explanation lies behind the rise of this somewhat remarkable procedure, it did, in fact, give an initiative in legislation to the Lords and Commons in parliament. Parallel to it were changes in the control over justice and administration. These were closely connected; they were both largely effected through the instruments of Impeachment and the High Court of Parliament. Lords and Commons obtained, alongside the king and council, an initiative and share in the highest judicial proceedings in parliament, and in the trial of the king's ministers. In effect, they obtained powers of co-operation in justice and administration similar to the larger powers which the Common Petition gave them in legislation. This largely completed the framework of the modern parliament.⁵ The partnership of king and community was completed; and, indeed, a modern transformation, whereby the community eventually became the dominant partner, was begun.

These changes effected, or perhaps more truly reflected, a change in the centre of political gravity, a full understanding of which would necessitate a knowledge of all the complex social and economic and political evolution of the time. From lying in the hands of the ruler, the centre of political gravity continued its long movement, imperceptibly and for the most part unrecognized, into the hands of the people. Parliament,

⁵ There were, of course, other important aspects. Some aspects of taxation are discussed in my *Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries* (Manchester, 1937), 55-82. Foreign policy is touched on in pp. 8, 28-9, 48. All these developments are discussed, more or less briefly, in the chapters below. They will obviously have to be discussed further in volume III of this work, where the development of the council will also be discussed. Perhaps this will absolve me from the difficult and complicated task of defining the meaning of the term "parliament" on the many occasions when it is used in this volume. Some idea of my own views on this most controversial question can be gathered from the article "The 'Political Revolution' of the Thirteenth and Fourteenth Centuries," cited above.

which had begun as mainly the instrument of the former, began, tentatively and uncertainly, to be the instrument of the latter. Though they were not persisted in, precedents were established for the seventeenth century. The High Court of Parliament was established. Lords and Commons, acting for the Community of all England, began to claim the attributes of parliament as a whole. Though this development had not proceeded far when the century ended, it had proceeded far enough to link the community inseparably with the ruler in government and to make the sovereignty of king in parliament the natural expression of the equilibrium in politics which had actually been attained.

Such great changes as these were not achieved without much creative thinking; and they were not achieved without a great deal of political discord which has given the century a worse reputation that it has really deserved. Instead of being regarded as an age of great achievement, the fourteenth century has been looked upon as a period of selfishness, mediocrity and even decadence. Instead of being regarded as a birth-place of modern constitutionalism and democracy, it has been regarded as little more than a prelude to the Lancastrian tragedy. No period of English history, perhaps, has ever had its achievements so belittled and its virtues so completely ignored.

It is true that it was a time of many troubles. The disturbances of Edward II's reign began before his coronation; the disputes under Richard II rose in a crescendo until he was deposed. In this period, Englishmen began to drop their reputation for frivolity and to acquire one for political turbulence. This present volume is filled with conflict, in spite of the long, stable and, on the whole, not inglorious reign of Edward III. On the other hand, though there was much conflict, there was little bloodshed. There were many political executions but there was no real civil war.⁶ There was much change but little destruc-

⁶ The campaigns of Boroughbridge and Radcot Bridge were the nearest that this century came to a civil war. In neither case was the "battle" much more than a heavy skirmish. The depositions of Edward II and Richard II were both accomplished with hardly any fighting at all.

tion. Continuity was still a marked feature of political development. There were plenty of revolutionaries in the fourteenth century, in the sense of men who wished to give a new interpretation to old ideas of government, but very few who departed entirely from the ancient political ideals. The unity of England was still greater than the disunity. The nation was still borne forward by its way of political life. There were bitter conflicts between the government and the governed, between the king and the people; but they were solved by remarkable acts of conciliation and compromise, like those of 1326 and 1399. The difficulties which confronted the nation were never greater or more bewildering; but whilst this fundamental health permeated the body politic they would be overcome. In overcoming them, the English people would lay the foundations of constitutional monarchy and democracy, not for themselves alone, but for the modern world.

II

Few, at the beginning of the century, could have foreseen such an achievement. Edward I's last years were troubled and inglorious. The reign of Edward II, which formally began in 1308, was almost wholly unfortunate. Foreign policy proved even more disastrous between 1308 and 1327 than it had under Henry III. Edward II could neither defeat the Scots nor obtain peace from them by relinquishing his father's claims. His humiliation at Bannockburn in 1314 lost more for the Crown, perhaps, than any other single episode of his reign. For England, it was comparable in its consequences with the battle of Bouvines. After 1323, Edward was equally unsuccessful in his relations with France. The nation would, for its part, neither relinquish its pretensions abroad, nor consent to the united national effort of aggression which these pretensions logically entailed. Perhaps no English ruler since the Conquest has ever been so destroyed by foreign affairs as was the second Edward.

The lesson plainly to be derived from his failure was to be writ large in the political strategy of Edward III.

In domestic politics the tragedy of Edward II's reign was, if possible, even greater. The whole reign was filled with disputes between the magnates and the king. To some extent this was the fault of the ruler. To an even greater extent, perhaps, it was due to constitutional problems many of which Edward II inherited from his father rather than created for himself. Edward I's idea of monarchy, as benevolent paternalism, had been in dispute at least since 1297. Whatever the character of his successor, there was likely to be a strong reaction when Edward's masterful personality was removed. But most of all, it is now beginning to seem likely, the disputes of the reign were the consequence of a most ambitious and far-reaching reform movement on the part of the barons, the real nature of which is still uncertain, but of which the main outline at least is beginning to emerge.

Edward II's character need not, in fact, detain us.⁷ He was not unlikeable; but, even though without cruelty or vice, he was hopelessly mediocre. His main contribution to politics and the constitution was to cling tenaciously to the old ideas of personal monarchy, the only ones he understood, and to invite correction and reform both by his weakness and his conservatism. His conservatism was not all unreasonable. Its logic was, indeed, underlined by the extremism of some of his foes. The ideals of the personal monarchy could not safely be simply discarded by reformers in a hurry or politicians ambitious for power. There was something to be said for the

⁷ The details of his life before his accession have been gathered together with sympathetic skill by Professor H. Johnstone, in *Edward of Carnarvon* (Manchester, 1946). Cf. T. F. Tout, *The Place of the Reign of Edward II in English Constitutional History*, 2nd ed., ed. H. Johnstone (Manchester, 1937), 11; and Stubbs, *Constitutional History*, II, 327-9, and in his Introduction to the Monk of Malmesbury, in *Chronicles of Edward I and Edward II* (R.S., 1882), II, xlviii: "He was a trifler, an amateur farmer, a breeder of horses, a patron of playwrights, a contriver of masques, a smatterer in mechanical arts; he was, it may be, an adept in rowing and a practised whip; he could dig a pit or thatch a barn; somewhat varied and inconsistent accomplishments, but all testifying to the skilful hand rather than the thoughtful head, and in some respects reminding us of the tastes of more modern and scarcely less fortunate princes, such as Louis XVI."

Despensers, who believed that the grievances of the nation could be met by making the monarchy efficient without surrendering any of its powers. The genius of these imaginative royalists illuminates the later reforming period and just possibly gives a touch of Disraelian conservatism to the reactionary Statute of York. What Edward II and the Despensers tried to do was, in fact, achieved, though on broader and better lines, by Edward III.

Nevertheless, even if there is something to be said for Edward's idea of monarchy, there is little to be said for his methods. Even though he may have felt that in defending Peter Gaveston he was defending the Crown, it remains true that he sacrificed the prospects of his reign and the hope of English unity for the sake of a dubious personal attachment. He later renounced all hope of conciliating the opposition by his execution of Thomas of Lancaster. Some of those who flocked to Edward's tomb at Gloucester, after his murder, may have felt, and felt rightly, that he had died for a constitutional ideal; but though he may have died for it, he had not the qualities necessary to live for it, at least in those dangerous and difficult times. He had neither the ability of his son to accommodate himself to circumstances, nor the personality of his father to unite the nation in loyalty under the old political ways. He was too brave and stubborn to be trampled on by his magnates; but he was colourless and uninspiring enough to invite the attempt. He might have been a fair ruler in a period of stability and security, though some historians doubt even this; but he was a very poor ruler in a time of crisis and change. It may be possible to explain some of his deficiencies by his early upbringing, though this is open to question; but there can be little doubt that, in spite of his good qualities, he deserved most of the censures of Bishop Stubbs. Stubbs probably underestimated the radicalism in the ranks of Edward's opponents, but it is doubtful if he underestimated the "faults and follies" by which Edward threw away his great advantages at the beginning of his reign.

The opposition to Edward made its own mistakes; but it is

doubtful if it was as bad as it has been painted. The Earl of Lincoln, who began it, had been chief councillor to the great Edward I. Thomas of Lancaster, who continued it, was perhaps surly and vindictive, but he was also courageous and not lacking in political ideals. The Lancastrians and Marchers were selfish and aristocratic, but the former at least had a touch of radicalism in their make-up. Their appeal to the "people" from 1308 to 1321 made them the party of the future. They were parliamentarians. They were friends of the Commons and enemies of absolute rule.⁸ We know little of their specific doctrines; but it is likely that they believed in a new co-operation between the ruler and the people, and a new definition of the community of the realm. They were radicals, if by radical we mean those who are in advance (rightly or wrongly) of the contemporary opinion. Very much of their spirit was absorbed in the settlement which followed Edward's deposition and from there was carried down the stream of English history. It is somewhat ironic that some writers have not only denied them the name of reformers, but have also questioned the very existence of a tradition that can be called Lancastrian. In spite of that, they made a remarkable contribution to the constitutional development of England in the brief space of eighteen years.

The most significant features of the early baronial movement of reform were clause four of the coronation oath and the Declaration of 1308. The former was an addition to the traditional threefold oath of English kings, finally accepted as the price of Edward's coronation, by which Edward bound himself to accept unspecified reforms at the hands of his subjects. The latter was an assertion, by the magnates, of a principle of opposition whereby they justified violence against the ruler if he failed to satisfy their just demands. In one sense, these two

⁸ For some of the evidence which lies behind these somewhat challenging generalizations, see Chapters I and II below. According to John of Trokelowe, the Earl of Lincoln handed on his traditions of opposition to Thomas of Lancaster; *Annales*, ed. H. T. Riley (R.S., 1866), 72-3. By calling the Lancastrians parliamentarians I wish to suggest no more than that, contrary to the accepted opinion, they believed in parliamentary action. I hope to publish more of the evidence for this at an early date.

achievements—for Edward was compelled at least to tolerate the Declaration—were complementary; and their implications seem to have constituted a very far-reaching challenge to the ideas of personal monarchy which had been accepted, in the main, until the beginning of this reign.⁹

The new coronation promise both extended the political interest of the community and challenged the legislative ascendancy of the ruler. For some purposes, though with a clear if indefinite limitation, it placed the king below the level of his subjects, and gave the constitution into the hands of the "commonalty," to be amended almost according to their will.

The Declaration, for its part, dethroned the personal monarch from the summit of the political structure. It replaced him by the Crown, distinguishing this from the king's person, identifying its interests with the liege subjects as well as with the ruler. The Crown was to be sustained by both the king and the magnates. In support of it, the magnates were justified, if justice was denied, in offering violent opposition to the king.

Thus, both the initial acts of the opposition to Edward attacked the concept of personal monarchy. Each of them disclosed revolutionary principles. They may have been intended to have only limited application; but they were couched in very general terms. They suggest that the magnates were gravely dissatisfied with the constitution. In making such demands they must have been prepared to stand up to some, at least, of the consequences. Events were, indeed, to show that though they were more conservative in some ways than Simon de Montfort, they nevertheless proposed what amounted to a new partnership between the king and community.¹⁰ This

⁹ This position, which I have adopted only after long hesitation, is discussed at length in Chapter I below.

¹⁰ The word "community" should perhaps here be taken to mean primarily the magnates and particularly the earls and barons; but there is some indication, as for example in the Declaration of 1308, that the latter regarded themselves on occasions as speaking for the "middle" classes, though on other occasions, as in the famous scene in the exchequer in April 1312, the latter also spoke for themselves. It seems very probable that, by 1322, the "Community of England" or "Commonalty of England" usually included knights and burgesses, as well as the magnates; see W. A. Morris, "Magnates and the Community of the Realm in Parliament," in *Medievalia et Humanistica*, I (1943), 58-94.

went far beyond what Edward I had offered, in spite of his *Quod omnes tangit*. In it, the contribution of the community would be as significant and vital as that of the ruler. It was not a modification of, it was a direct challenge to, the ideal of a king leading and ruling a willing nation which was the ideal of personal monarchy. Thus it created a wide gulf between Edward II and the opposition, a gulf which was never completely filled during fourteen years of experimentation and strife.

The prolonged effort to obtain reform after 1308, it may be argued, was all directly or indirectly connected with these initial postulates by the magnates and concessions by the ruler. The king was bound by preliminary agreements which he detested and which constituted a permanent challenge; the magnates were committed to principles which, by their extreme nature, constantly thwarted their more limited and concrete proposals for reform. Despite this there were very sincere efforts, on both sides, to achieve conciliation and agreement. Edward kept his promises to the barons in part or, as he may have considered, in full. From the coronation oath and the Declaration flowed the first exile of Gaveston (May, 1308),¹¹ the first reforming articles of Stamford (July, 1309), and the appointment of the Lords Ordainers (16 March, 1310) to ordain for the welfare of the household and the realm. For their part, the magnates, if we exclude the theoretical basis of their reforming platform, were not unreasonable. Their Ordinances of 1311 were, in general, on the model of previous reforming enactments. They exiled Gaveston. They restricted and improved the method of royal taxation. They provided remedy against oppressions by the king's servants. They demanded the election of ministers with the assent of the barons in parliament. They extended the scope of the *negotia*

¹¹ This was the first great "political" trial of the reign and was of very great importance. Peter's exile was "awarded" by the "people," though he may have been judged by his peers; the Canon of Bridlington, in *Chronicles of Edward I and Edward II* (R.S., 1883), II, 34; H. G. Richardson, "English Coronation Oath," in *Speculum*, XXIV (January 1949), 67 n. 112; Brit. Mus. MS. Burney 277, fo. 5d.

regis et regni, as distinct from the *negotia regis*. On the other hand the Ordainers did not, like Simon de Montfort, aspire to control the government. They extended their contribution, especially in considerations of peace or war; but they did not extend it so far as to challenge the supremacy of the king. They made the king's ministers answerable for some things in parliament, and they wanted a share in their election; but they left them completely subject, in the processes of administration, to the royal commands. They did not even, perhaps, try to revolutionize the system of government through the king's household.¹² They recognized its importance in the growing bureaucracy, and they sought to ensure that it should be honestly administered; but they did not, indeed they probably could not, make it in any real sense independent of the king.

The most significant of their proposals, from the point of view of the constitution, were those which extended the actions of the magnates in parliament. The consent of the magnates to war, the appointment of ministers, and the hearing of complaints against ministers, were all to be transacted in this assembly. Parliament thus became, what it had not clearly become even in the Provisions of Oxford, the centre of the nation's political life. Some of its activities may have been assumed rather than stated; they have to be sought outside the Ordinances in the Lancastrian attitude to political trials and in the Lancastrian appeal to the "people."¹³ But they are sufficiently evident perhaps to refute the accusation that the Ordainers were not parliamentarians. The fact that they were parliamentarians may, indeed, be a key to their whole attitude. In 1311 at least they renounced the Montfortian effort to reform the realm through the royal council, in favour of reforming ordinances fortified by parliamentary action. Theirs was the first great baronial enactment which can in any way be said to have made

¹² There is weighty opinion against this assertion. The problem is discussed in my *Studies*, Chapter IX, and in Chapter II below.

¹³ I discussed this problem briefly in a paper read to the American Historical Association, December 1949, which I hope to publish in due course. The meaning of "people," like "community of the realm," at this period is still uncertain.

parliament the cornerstone of reform. From this time, the extension or restriction of the action of Lords and Commons in parliament was one of the great issues behind political strife. Thus the Ordinances of 1311 not only gave new expression to the claim of the Lords to participate in the government; they were also a landmark in the slow evolution from personal monarchy to the sovereignty of king in parliament.

If the Ordinances failed to bring an end to political struggle, this was partly through the fact that they represented only part of the reforming programme, partly through the king's objection to their underlying political principles, and partly through the king's personal attachment to Peter Gaveston, the first victim of the reforms. How far Edward was aware of the constitutional issues involved in his defence of Peter will probably always remain uncertain. In any case, his refusal to part with him was an insuperable obstacle to any true partnership and harmony between king and magnates. Peter returned from the exile to which the Ordinances had condemned him. In May 1312 he was executed by four of the Lords Ordainers.¹⁴ To the Lancastrians, his execution was justified both by the Ordinances and by the declaration of 1308. To Edward II, it was murder; and there could be no true reconciliation, after this, between him and those whom he believed to be responsible.¹⁵ All the attempts to stabilize the government of England between 1312 and 1322 were no more than papering the cracks. The magnates were in the ascendant; but they had hopelessly alienated their monarch, and could devise no means of reconciling their ascendancy with the legitimate claims and powers of the king. The king was forced to accept baronial direction; but he was fundamentally hostile to the movement of reform. He was crippled by both his earlier commitments and by his

¹⁴ He was "tried" before two justices with a commission of gaol delivery. But the justices only put into operation the penalty incurred by Peter when he returned from exile without permission from the community of the realm. He was executed by order of the Earls of Warwick, Arundel, Hereford and Lancaster. The execution was specially arranged to take place on Blacklow Hill, in *feodo comitis Lancastriae*; *Annales Londonienses*, in *Chronicles of Edward I and Edward II*, I, 207.

¹⁵ See the speech put into his mouth in 1320; Malmesbury, *Ibid.*, II, 250.

inability to defend his kingdom;¹⁶ but his royal power was indispensable to the security of the nation; and even in defeat and humiliation it could not be more than temporarily repressed.¹⁷ Each side was extreme in its position; but nobody wanted civil war. There was a powerful group of mediators, including especially the bishops, known to modern historians as the Middle Party. Nevertheless, the material for conciliation did not really exist after the death of Gaveston. Personalities and not principles now tended to dominate the situation. A far-reaching political crisis was difficult to avoid.

During this uneasy truce there was a good deal of debating as there had been between 1259 and 1265. Edward, like Henry III before him, seems to have got the better of the arguments. The Ordinances, the royalists claimed, were a derogation from the rights of the Crown. They went against the coronation oath and Magna Carta. They contained principles of opposition which had already been condemned by St. Louis. The king could not alienate his prerogative, and should not be deprived of essential elements in the *negotia regis*, such as the decision to go to war.¹⁸ The answer of the magnates was possibly less confident. England, they said, was governed not by written law but by ancient custom; and when this was insufficient, king and magnates were called on to amend it, at

¹⁶ The Battle of Bannockburn in 1314 confirmed the weakness of Edward. It was comparable, in its effects on domestic politics, with Bouvines and Stirling Bridge. After his defeat, Edward "denied nothing to the earls"; the Monk of Malmesbury, in *Ibid.*, II, 208.

¹⁷ The magnates even, in February 1316, reverted some distance towards the idea of 1258-65, by the appointment of a reforming baronial council which should see that the Ordinances were carried out. Thomas of Lancaster was made chief of the council, with the avowed object of applying and extending the ordinances. He asked Edward to do no business "of the king or of the realm" without the assent of the earls and barons of his council. The result was a stalemate. Thomas withdrew from the council and the government. See my comments in *Studies*, 130-1, 164-5, and Chapter IX on the Ordinances of 1311. Cf. T. F. Tout, *Place of Edward II*, 95; J. C. Davis, *Baronial Opposition to Edward II* (Cambridge, 1918), 412-13; A. Hughes, "The Parliament of Lincoln, 1316," in *Transactions of the Royal Historical Society* (N.S.), X (1896), 41-58; *Rot. Parl.*, I, 350-4. It seems likely that the prelates, earls and barons who were to assent to the business of king and kingdom were those on the council, at whose head was Thomas of Lancaster. This has been assumed above, but the position is not entirely clear.

¹⁸ *Annales Londonienses*, in *Chronicles of Edward I and Edward II*, I, 212-14.

the complaint of the people. This may have contained the germs of new political ideas which were to be of great importance for the future;¹⁹ but it was still a retreat from the language of 1308. In any case, debating could no more solve the problem of government in 1311-20 than in 1259-65.

A last great effort at conciliation culminated in the "Treaty" of Leake in August 1318. It was undertaken by the Middle Party. Their aim was to bring about peace between Earl Thomas and King Edward on the basis of the Ordinances.²⁰ In this they were partly successful. By laborious negotiations, both sides were brought together, finally reconciled their differences, and exchanged a kiss of peace. In spite of this, the "Treaty" of Leake, prelude to a united effort against the Scots, was little more than an armistice. It set up a magnates' standing council consisting of two bishops, one earl, one baron, and one banneret representing the Earl of Lancaster. All important matters which could be done without parliament were to be done with their assent. But this was a compromise which fully satisfied neither side. The actions of the Middle Party divided the ranks of the barons, and alienated Thomas of Lancaster, who felt that he had been deserted. The earl was neither inside nor outside the new government. The king, on the other hand, was still alienated by drastic restrictions on his power. Thus the scheme of 1318 attempted a supervision over the monarch, but destroyed the unity of the opposition on which it depended for success.²¹ The settlement was an incitement to political disorder, rather than the inauguration of political peace.

The failure of the movement of conciliation in 1318 left the northern magnates, at least, little alternative except support of

¹⁹ This idea of king and magnates co-operating to remedy weaknesses shown by the *vulgus* may have had some influence on the growth of legislation on petition of the Commons in parliament. The appeal to the *vulgus* is specially worth noting in view of what has been said earlier about the Lancastrian policy.

²⁰ See my article "The Negotiations Preceding the 'Treaty' of Leake, August 1318," in *Studies in Medieval History Presented to F. M. Powicke*, 333-53; cf. J. G. Edwards. "The Negotiation of the Treaty of Leake, 1318," in *Essays in History Presented to R. Lane Poole*, ed. H. W. C. Davis (Oxford, 1927), 360-78.

²¹ Cf., however, J. C. Davis's picture of Edward at the parliament of York in 1318; *The Baronial Opposition to Edward II*, 467.

the ruler. After the loss of Berwick to the Scots, they could not afford to take part in a civil war. Thus the attempt of the Middle Party to stabilize the situation foundered despite the strong support it had received from the Pope and from the bishops. The tide was running against it, in favour of a settlement imposed, not by the barons and bishops, but by the monarch. England, divided and weakened, was getting ready to purchase internal harmony by the sacrifice of the reforming ideals and programme of 1308.

The inner weakness of the opposition which confronted Edward was shown by the events of 1321. The rising of 1321 was the outcome of royal, not baronial, aggression. It was due to the promotion of the Despensers, their power in the government, and the territorial expansion of Hugh the Younger as one of the Gloucester co-heirs, in the Welsh Marches, the region of the Marcher lords. It was essentially a rising of Marcher magnates, led by the Earl of Hereford and the Mortimers. Thomas of Lancaster supported the movement, but could not bring in the Northern magnates. With the failure of baronial unity disappeared all hope of imposing a permanent limitation on the Crown. The bishops were prepared, once more, to mediate between the king and the barons, but not to support the latter. The Marchers could defeat the Despensers in the Marches and overawe the king in London, but could not win over the nation. Their cause was not that of the community. They had some, but not enough, virtues. They revived the ideals of 1308, appealed to the law and the "people" and looked to parliament. They gave a notable expression of the baronial idea of opposition to the king's "favourites" by great political trials, involving judgement by the magnates and concurrence of the "commonalty" in parliament, out of which Impeachment would one day arise. On the other hand, they threatened to perpetuate the dangerous habit of sworn confederacies and regional assemblies. They determined the guilt of the Despensers in their own baronial "parliament" and compelled Edward to accept their "award." They had an idea of punishment by a judicial process; but they had apparently no clear

idea of parliament itself as a court. Their condemnation of the Despensers was thus extra-legal and extra-constitutional. The majority of people might sympathize with their objectives, but could not sanction their methods without endangering the whole stability of the law. That there was a widespread sympathy for their aims, and for Thomas of Lancaster who inspired some of them, was shown conclusively by the reaction of 1326. But all this could not commend them to a nation which was weary of political struggles and distracted by the devastations of the Scots.

Thus, in spite of some commendable aims and great initial successes, the revolt of 1321 quickly foundered. The nation would not fight for the Despensers, but it would not fight against them. Edward had to exile his ministers; though he probably got as his price a condemnation of the Declaration of 1308.²² In spite of this, the odds, as we can now see, were greatly in his favour. Less than half the magnates, without the backing of the people, were no match, in the long run, for the resources of the Crown. The king was able to recruit armies in the south²³ and use the hardy levies of Westmorland and Northumberland. The battle of Boroughbridge, in which Lancaster was defeated, was only a skirmish. The opposition can hardly be said to have been defeated; it crumbled away. The result was the death of Hereford, the execution of Lancaster, together with many of his chief supporters, and the momentary destruction of all organized resistance. Perhaps what the English nation rejected in 1322 was not a reform but a too radical infringement upon the powers of the monarch, and a baronial leadership which was no improvement on that of the king. What they really wanted was some compromise to

²² The evidence for this is set forth, tentatively, in the article on "The Sherburn Indenture" *E.H.R.*, LXIII (January 1948), 1-28, and in Chapter III below.

²³ *Chronicon de Lanercost*, ed. J. Stevenson (Edinburgh, 1839), 242-3: *Tota fortitudine australium ultra Trentam*. His support included the Archbishop of Canterbury and many bishops of the Southern province. On 1 December 1322 they declared the exile of the Despensers to be unjust (*Annales Paulini*, in *Chronicles of Edward I and Edward II*, I, 300). Thus the core of the mediating party of 1318 seems to have accepted the triumph of Edward and the return of the Despensers.

end the long-drawn-out and disastrous effort to impose the ideals of 1308 upon the ruler. What they got was a great royalist triumph and an extreme royalist restoration in the famous Statute of York.

Because of this constitutional background, the settlement of 1322 was directed not only against the revolt of 1321, but also against the whole basis of the reforming movement since Edward's accession. It directly annulled the Ordinances of 1311 and, in the revocation of the process against the Despensers, in the trial of Thomas of Lancaster and in other enactments of the period, it denied the baronial theories regarding political trials. By implication, at least, it revoked Edward's promise in clause four of his coronation oath. It buttressed all the attributes of personal monarchy and tried to make the king immune from all attacks. Even the appeal to the "people" may have been partly taken over by the ruler; in any case, it was rendered harmless. It was incorporated into a parliamentary procedure which was narrowly hedged in by precautions and which was inspired by a return to the ideas of the past when the part played by the Commons in parliament was extremely small. The distinction between the king and the Crown was, by implication, abolished. The monarch alone became once more the guardian of the latter's interests. Though the great institution of parliament was still given a high place in the constitution, it was interpreted not as an instrument of the opposition, but as a fortress of the royal power. Legislation in non-parliamentary baronial assemblies was forbidden; but the use of parliament to establish baronial reforms or to legislate baronial judgements—indeed, to effect any enactment contrary to the royal power—was invalidated. All initiative in legislation was restored into the hands of the ruler. The function of the community was simply to discuss and give or withhold assent. The one redeeming feature of the statute was its acceptance of the decisive importance and broad constitution of the parliamentary assembly. The authors of the statute had no objection to the Commons in parliament so long as they kept their due station. Thus, by accepting the people's

business as the business of parliament and by including the Commons in the formula of consent, the statute probably did something to establish the formal framework of parliament, consisting of the King, the Commons and the Lords.²⁴

The royalists of 1322 clearly made a strenuous effort to obtain national unity on the traditional basis of the ascendancy and leadership of the Crown. In the end, they failed as completely as the baronial opposition had failed, and for a similar reason. They tried to solve a national problem by a partisan solution. Their statute was too much dictated by a negative hostility to the movement of 1308-22. They made no real concession to the aspirations of the opposition. They denied initiative in legislation to the Lords and Commons, but made no real effort to meet their legitimate grievances. They yielded nothing on the questions of ministerial responsibility, political trials, or the political aspirations of the Lords. Like the Tories of 1867, they took important political ideals from their opponents; but they did not honestly pursue them. They summed up, in their statute, a good deal of constitutional evolution; but they looked back to an outmoded personal monarchy for their inspiration. They only posed as being progressive. By damming the stream of constitutional change, they made a new crisis inevitable. After the Statute of York, no future opposition could be quite secure in any of its gains. As far as one statute could make it, the monarchy was impregnable, secured against all possibility of baronial attack. Even a new statute could not entirely undo all the consequences of 1322: it could be argued that it would, as being against the royal power, invalidate itself by the very attempt. Nevertheless, the monarchy still had one fatal weakness. This was the person of the monarch. The king himself could not be rendered impregnable by statute. The more the monarchy was made unchangeable, the more men's minds were likely to turn to the possibility of changing the ruler. What one ruler rejected, another might concede. Of course

²⁴ Some of the problems relating to this statute, thus summarily dismissed, are discussed below in Chapter III.

changing the ruler was even less "constitutional" than ordaining against the monarch. Nevertheless it was, or could be, final. It looked as if it were the most effective instrument left available to the opposition by the Statute of York. The momentous question of deposition, already looked at obliquely under Henry III and in the struggle for the Ordinances, came to the forefront of English politics, paradoxically enough, partly as an outcome of the great royalist triumph in 1322.

Thus the royalist reaction of 1322 went beyond what the nation had expected. The wide support which Edward had received was not given because of any love of extreme royal pretensions. It had been the price of national peace and security. The price was not paid. An attack on Scotland in 1322 ended in fiasco. In 1323 Andrew Harclay, victor of Boroughbridge, in despair negotiated with the Scots. A thirteen years' truce with Robert Bruce left the Northerners embittered by the "betrayal" of Lancaster, smarting from their defeats at Myton and Byland, and surrounded by devastation. A war and truce with France, in 1324, left the English in possession of little more than Bordeaux. At home the blood of Thomas of Lancaster as well as that of Gaveston lay between Edward and his subjects. The Lancastrians were irreconcilable. The hostility of the Marchers was deepened by the revival and extension of Despenser power in Gloucester and the Marches;²⁵ their power, slowly undermined by the effects of the conquest of Wales, was now threatened by a solid wedge of territory organized, through the Despensers, in support of the Crown. They were defeated and declining, but they were still formidable; and they were at length solidly united by misfortune with the Lancastrians and the Northern magnates in opposition to the Crown.

The royalist reaction went far in another direction. It showed, more clearly perhaps than anything up to this point,

²⁵ "Despenser ruled over all South Wales from Milford Haven and Cilgerran to Chepstow and Abergavenny"; Tout, *Place of Edward II* (2nd edition, ed. H. Johnstone, Manchester, 1937), 139.

the power of the administration.²⁶ It produced some of the best reforms of the fourteenth century;²⁷ but it revealed the growing bureaucracy as a stronghold of monarchical power. The constitutional problem this presented was not new in the fourteenth century; but it unquestionably acquired an added importance as a result of the royalist reaction of 1322.

Meanwhile, extreme monarchical ideas were in the ascendant. Such was the rigour of the king, the Monk of Malmesbury informs us,²⁸ that nobody, however great, dared to withstand his wishes. Parliaments, *tractatus* and councils decided only trifles. The magnates, terrified by the fate of Edward's opponents, gave a free rein to the wishes of the king. Thus, nowadays, it was said, will conquers reason. Whatever pleases the king has the force of law. The use of this last tag is significant. Under the strain of conflict, and perhaps also pushed on by a growth in its own efficiency and power, the monarchy was taking tentative steps towards that absolutism which is usually associated only with Richard II. The struggles and developments of the period were beginning to produce the rise of two conflicting claims to sovereignty, that of the ruler and that of the nation, already contending for control over parliament, the greatest institution in the land. If the clear emergence of this conflict still lay far in the future, there are signs that at least the material for it was accumulating in the reign of Edward II. This is, indeed, one more argument in favour of the parallel between the reigns of Edward II and Richard II, which is one of the best-known and most illuminating passages in the work of Bishop Stubbs.

In spite of all the efforts of Edward and the Despensers, however, the opposition waxed instead of waned. Edward

²⁶ The government was reminiscent of that after 1232. Hugh Despenser the Younger, as chamberlain, seems to have dominated the royal council; my *Studies*, 177. He was supported by Robert Baldock, chancellor from 1323 to 1326. Walter Stapledon, Bishop of Exeter, treasurer from 1322 to 1325, despite his early connection with the Ordainers, seems to have been a strong supporter of the monarchy. The importance of the ministers is shown by the fact that both Stapledon and Baldock were slain in the rising of 1326.

²⁷ Tout, *Place of Edward II*, 142-3.

²⁸ *Vita Edwardi Secundi*, in *Chronicles of Edward I and Edward II*, II, 280.

knew where it lay, but was powerless to destroy it. In 1322 he wandered through the shires of York and Lancaster and the March of Wales, punishing wrongdoers and teaching all to obey the laws.²⁹ When Isabella finally invaded England, amongst her most prominent supporters were Lancaster and "others from the parts of the North and the March."³⁰ These again figured in the council of regency set up in 1327. The royalist reaction of 1322 created that unity between West and North which had been lacking in 1321. With the two great regional groupings and the Lancastrian earldoms united against him, the king could only hope to retain his ascendancy if the rest of the nation was firm in his support. In fact, the reverse was the case. The reaction after 1322 had turned out to be no restoration of ancient custom and harmony, but only a restoration of extreme monarchical ideas. Going back to the past by Edward, as later in the case of Richard II, was an eclectic process in which the monarch chose only what was advantageous to the Crown. Edward, like the barons of 1321, could defeat his immediate opponents, but he could not get the support of the nation. Failure to win the confidence of the nation made all his other efforts to stabilize his position of little avail.

It was the opposition of 1326, headed by Queen Isabella, which was the national movement. Some of the clergy of the Southern province sided with Edward, but they were swept aside by a torrent which was both popular and aristocratic.³¹

²⁹ *Chronica* of Henry of Blanford, in *Chronica Johannis de Trokelowe et Henrici de Blanford*, ed. H. T. Riley (R.S., 1866), 139.

³⁰ Murimuth, *Cont. Chron.*, ed. E. M. Thompson (R.S., 1889), 47; *Flores Hist.*, ed. H. R. Luard (R.S., 1890), III, 233. The Northerners included Percy and Wake. Thomas of Brotherton is also mentioned.

³¹ *Annales Paulini*, in *Chronicles of Edward I and Edward II*, I, 315. But these did not include the bishops Lincoln, Hereford and Ely, who joined Isabella. (*Vita et Mors Edwardi Secundi*, in *ibid.*, II, 308.) John Stratford of Winchester was also against the king. Indeed, Murimuth said that "fere omnes praelati" joined Isabella (*Cont. Chron.*, 46). The Papacy as usual supported the constitutional authority. The Pope's support of Edward was repaid, in a meeting of the clergy at St. Paul's in 1327, by refusal to grant him a tax; *Annales Paulini*, in *Chronicles of Edward I and Edward II*, I, 324.

Isabella made no proclamation or promises.³² She had no reforming programme. According to one source, all that she sought personally was reconciliation with the king.³³ Edward lost his throne because, when the crisis came, he found that he had no supporters, and his opponents found that, after 1322, there was nothing short of deposition which would solve the long drawn-out political and constitutional crisis of his reign.

Thus Edward II's reign ended in tragic failure. But it was not without its achievements. Though men found no solutions to the constitutional problem, they were moving towards them. The bankruptcy of the two extremes of political action which the reign witnessed paved the way for compromise and moderation. Compromise and moderation were to succeed where extremism had failed. The movement against Edward, inglorious in its leadership and tragic in its consequences, was to prove, nevertheless, to be the prelude to one of the greatest political settlements the English people ever made.

III

THE revolution of 1326, even without the settlement which followed, did, indeed, open a new chapter in the development of the constitution. It was a decisive check to the growing power of the king, an insistence on the ultimate supremacy of the nation. It set the face of Englishmen towards limited monarchy more definitely than any single event between Magna Carta and the revolution of 1399. It emphasized the vulnerability of the monarch. If his crown was indestructible, his person was not. Deposition brought into clear relief his ultimate limitations. The splendour and majesty of the throne still rested on the support of the nation. The king could not

³² Except to declare her affection for the Ordinances; *C.M.H.*, VII, 431. No reference for this statement is given.

³³ Bridlington, in *Chronicles of Edward I and Edward II*, II, 86-7.

coerce the whole people. He could only lead them. The basis of all his growing power was still the principle of consent. The reason why the subjects were normally weak in comparison to the ruler was that they were nearly always divided. If they were stirred by a common purpose, as in 1258 or 1326, they could nearly always prevail. The movement of 1326 was, in fact, the most "national" movement yet to be encountered in the fourteenth century; the defection of the Londoners seems to have gone far to decide the issue against Edward II.³⁴

Deposition had, finally, a great effect on the growth of parliament. In 1327, it was not, and could not be, simply a "parliamentary" deposition. Indeed, Edward abdicated in favour of his son, and thus no formal deposition was required. But yet there were some forms of legal process against him.³⁵ There was an indictment. There was a decision by the estates of parliament and others. To many, perhaps to most people, these actions seemed to take place in "parliament." Parliament extended its grip on the popular imagination. Prominent in the "parliamentary" delegations and proceedings were the Commons. The bishops of Hereford and Winchester and the Archbishop of Canterbury put the case before the *populus* which cried out that it would have Edward rule no longer.³⁶ Whether or not these were the Commons of parliament, they were a part of the community from which the Commons were drawn.³⁷ From this moment, perhaps, the history of the modern parliament and of the modern Commons may be said, in some sense

³⁴ The "people" played a very important part in the crisis of 1326-7. It was their defection, the canon of Bridlington said, that sent Edward II in headlong flight towards Wales; *Chronicles of Edward I and Edward II*, II, 86. The Londoners and the magnates swore a mutual oath to support the new regime; *Chronicon* of Henry Knighton, ed. J. R. Lumby (R.S., 1889), I, 443.

³⁵ *Annales Paulini*, in *Chronicles of Edward I and Edward II*, I, 322: "per processum contra ipsum factum fuit depositus"; cited in my "Deposition of Richard II and the Accession of Henry IV," *E.H.R.*, LIV (April 1939), 228.

³⁶ *Ibid.*, 226.

³⁷ They were, in fact, probably mostly the parliamentary Commons; see *E.H.R.*, LIV, 226. For a good account of the political importance of London through the Middle Ages, see May McKisack, "London and the Succession to the Crown during the Middle Ages," in *Studies in Medieval History Presented to F. M. Powicke*, 76-89.

to have begun; at least they entered on a new period of their growth.

In one sense, too, the history of the modern limited monarchy may also be said to have begun at this moment. It is possible to argue that the English monarchy never recovered from the deposition of Edward II. Though the greatest medieval proponent of absolutism, Richard II, came over fifty years later, and though he was to base his position partly on the traditions of the personal monarch, those traditions had already received their death-blow by the deposition of his great-grandfather in 1327.

After the deposition came a new settlement; and just as the former was a landmark in the growth of the constitution, so was the latter. Neither, perhaps, was intended to effect a constitutional revolution. Isabella, at least, was no radical reformer. As we have seen, though she was supported by the Lancastrians, she did not propose any drastic reforms. On the other hand, she could not simply continue the policy of Edward II. She had to make some concessions to her supporters. Everything seems to have suggested a compromise. This is equally true, perhaps, of the situation after Edward III's own revolt of 1330, against Isabella and Mortimer. There is, indeed, so much continuity of policy running through both movements, of 1326 and 1330, that the constitutional historian may venture to study them together. Though the former was more radical and popular, and the latter more conservative and aristocratic,³⁸ both seem to have been an effort to make a new start after the disputes and failures of Edward II, to allay old quarrels as far as possible, and avoid the excesses of either side. Neither in 1326 nor in 1330 was there any attempt to disentangle the conflicting enactments of reformers and royalists in the preceding period. There was no annulment of earlier statutes and no new definition of royal power. The king took the same coronation oath as his father, though perhaps not

³⁸ I have ventured to base this generalization on the difference in their attitude towards "political" trials and also towards the Commons in parliament as illustrated by Edward's declaration of 1331 quoted below.

with the same implications. He began with the same structure of politics but with a different interpretation. The settlement of 1327-30 did not effect any great innovation, perhaps because the nation did not want any; but a new spirit was breathed into the old constitution which was to have profound consequences for many years to come.

To understand this spirit we have to know something of the character of the young Edward III, and of the problems with which he was confronted. These problems were not unlike those which had faced Henry III. Both young rulers began with a minority, following a disaster to the throne. If Edward's minority was shorter than that of Henry, the disaster had probably been just as great. Nor did the government of Isabella and Mortimer compare well with that which had guided the minority of Henry. It was marked, despite its solid achievement touched on above, by the attempt of Roger Mortimer to build up the same ascendancy in the Marches as had been striven for by the Despensers,³⁹ by the "shameful" peace of Northampton with the Scots in 1328, and by the inglorious execution, in 1330, of Edmund Earl of Kent.⁴⁰ The prestige of the medieval monarchy had never been lower than in these years of calamity and usurpation. The task confronting Edward was nothing less than the "restoration of the . . . monarchy both at home and abroad."⁴¹ His achievement can only be measured by the depth to which the country had fallen. As in the case of Henry, the two aspects of his policy, domestic and foreign, were complementary; it was impossible to succeed in one without the other.⁴² This is one great con-

³⁹ In 1328 he was made earl, with the significant title of Earl of the March of Wales; Adam Murimuth, *Cont. Chron.*, 58.

⁴⁰ Edmund was Edward II's brother. In spite of this, he had supported the rising of 1326. Along with Henry of Lancaster, Earl Thomas's brother, he had become restless in 1328. By a devious plot, which showed clearly the isolation of Isabella and the regrets of many of her supporters, Edmund was ruthlessly destroyed.

⁴¹ *My Chancery under Edward III*, 98.

⁴² An aggressive foreign policy was probably encouraged by the young magnates like Sir William Montague, who helped Edward to the throne, and whose influence many, with the notable exception of T. F. Tout, have tended to underestimate.

sideration which modern historians have occasionally left out of account.

In both aspects of his policy, Edward's successes were at first impressive and almost unprecedented. For a time they outdid even those of the great Edward I. They were, indeed, largely due to the strength of England and the fundamental soundness of her constitution. How much Edward's own character contributed is a moot question. Most modern historians have been harsh in their opinions of him. Yet contemporary writers one and all praised him. Thomas of Walsingham, of a later generation, exhausted himself in his extravagant eulogy, perhaps stimulated by the quarrels and failures of Richard II.⁴³ Even Hallam, as late as the nineteenth century, talked of the splendour of Edward's personal character, though he began to have serious misgivings about it. Hallam's successors had little except misgivings.⁴⁴ The revolution was completed by Stubbs.⁴⁵ To Stubbs, Edward was "a warrior; ambitious, unscrupulous, selfish, extravagant, and ostentatious." His obligations as a king sat lightly upon him. He plunged lightly and irresponsibly into a long and disastrous war.⁴⁶ He was content to enjoy the substance of power without thought for the future of the constitution. His policy perverted the barons from their age-long duty to the state.⁴⁷

Few people would now approve of all Stubbs' censures upon Edward. Fewer still would agree with Froissart in making him a peer of the legendary Arthur. He was somewhere in

⁴³ He was followed, in varying degrees, by writers in the fifteenth century.

Joshua Barnes, in the seventeenth century, outdid Thomas of Walsingham.

⁴⁴ Longman, in 1869 (*The Life and Times of Edward III*), was moving from lukewarm to hostile. He was followed by Freeman in the *Fortnightly Review*, May 1869.

⁴⁵ *C.H.*, 4th edition (1906), 393. The 1st edition was in 1873.

⁴⁶ Cf. E. Déprez, with perhaps some inconsistency; "La Conférence d'Avignon, 1344," in *Essays Presented to T. F. Tout*, ed. A. G. Little and F. M. Powicke (M.U.P., 1925), 306; *Les Préliminaires de la Guerre de Cent Ans* (Paris, 1902), 236. The latest discussion of this is given by Professor E. Perroy, *La Guerre de Cent Ans* (Paris, 1945). See also, by the same author, "Franco-English Relations, 1350-1400," in *History*, XXI (September 1936), 148-54.

⁴⁷ Hence, "The task of defending national liberty fell chiefly on the Commons;" *C.H.*, II, 426.

between the two estimates.⁴⁸ His love of fighting for its own sake was balanced by a deep and abiding love of his country. Whether or not we conclude that the wars he fought were largely inescapable, we must credit him with fighting them, for the most part, with magnificent success. His claim to the throne of France was more than a piece of vainglory; it was also shrewd diplomacy. In England, Edward was no legislator and no reformer; but the concessions he made to his subjects were a landmark in the political and constitutional evolution of the Commons and the Lords. We can reckon the disastrous cost of his policy to future generations by the gift of historical hindsight, but it is unfair to lay all the crushing charge at the feet of Edward III. Despite all that can be said against him, he helped to rescue England from deep degradation, and gave her what she most needed—half a century of stability and internal peace. In this task, his attributes of vigour, patriotism and political moderation played a not unimportant part.

Success in Edward's domestic restoration of the monarchy involved a renunciation, on the part of the barons, of the revolutionary claims put forward under Edward II and, on the part of the king, of the extreme monarchical pretensions contained in the Statute of York. The king was to retain his supremacy; but he was to use it in free co-operation with the nation. In 1331, Edward formally declared that "the matters which touch us and the estate of our realm are to be disposed of by the common counsel of the great men of our realm and in no other manner."⁴⁹ This was the keynote of the settlement.⁵⁰ It was illustrated by Edward's legislation, touched on in a later chapter, and by political trials in parliament which are a landmark in the development of the judicial functions of the Lords.

⁴⁸ See James Tait, "On the Date and Authorship of the 'Speculum Regis'," *E.H.R.*, XVI (January 1901), 110-5.

⁴⁹ Doc. VII, Chapter III below; *Foedera*, II, 799. Matters which touch us and our realm were the ancient *negotia regis et regni*. The above declaration is quoted in my "Political Revolution" of the Thirteenth and Fourteenth Centuries in England," *Speculum*, XXIV (October 1949), 502-10, which provides a background.

⁵⁰ See Chapter IV below.

It was later symbolized, in 1337, by a lavish creation of new earls.⁵¹ It ushered in a new and brilliant period in English history, comparable in many ways with that which had followed the accession of Edward I.⁵²

The magnates, for their part, renounced the Lancastrian designs on parliament and their appeal to the *populus*. They accepted Edward's personal ascendancy, and with it the old traditions of personal monarchy, on the assurance that the partnership in government they had formerly demanded would now be freely given them in return for their loyal support. The forms of their old dependence on the monarchy would be retained, but there would be a difference in the content. The real significance of this only the practice of Edwardian government would reveal.

The renunciation of the Lancastrian policy had important repercussions for the Commons. There was a reaction in 1330 against the position which they had obtained in the struggles of the last reign. There was no attempt to take from them all the fruits of that period; but they were reduced, as in 1322, to what was probably considered to be their rightful position of subordination to the king and the magnates. They were excluded from high politics and from the disposal of matters concerning the king and the realm. They were denied participation in political trials, both in 1330 and 1331.⁵³ They were

⁵¹ These included William Montague, close friend of Edward and one of his future captains against France, made Earl of Salisbury. William Bohun, son of Humphrey Bohun who had been slain at Boroughbridge, was made Earl of Northampton. Henry, son of Henry of Lancaster, became Earl of Derby. A new rank was added to the peerage when the king's son Edward, Earl of Chester, was made Duke of Cornwall. Edward III was extraordinarily generous to the new magnates. It was good policy, but greatly impoverished the crown; see Tout, *Chapters*, III, 38-9.

⁵² In 1369 Edward told parliament that "he had at all times during his reign acted with the advice and [consent?: a blank in MS.] of his magnates and Commons of his realm, in all the great business which touched him or his realm"; *Rot. Parl.*, II, 299; quoted by J. E. A. Jolliffe, *Constitutional History* (London, 1937), 371, n. 1. It is probable that the association of the Commons with the Lords was a very significant modification of the position which had actually been agreed upon in 1330. It shows the change which had occurred in the intervening period.

⁵³ *Rot. Parl.*, II, 52-3. The question of these trials is touched upon in Chapter IV below. A good general treatment of the question of trial by peers is given by B. Keeney, *Judgement of Peers* (Camb., Mass., 1949).

probably accorded a position in parliament roughly corresponding to that which had been given by the Statute of York. With the magnates co-operating closely with the king, the Commons stepped into a position which in some ways resembled that of the *Communitas Angliae* of the thirteenth century. They were left to form the opposition to Edward, if there was to be any. This would in time greatly enhance their importance, but at the moment it tended to leave them out in the cold. It seems to have militated, for a time, against their alignment with the magnates, without which, in spite of their gains under Edward II, they still held a dependent and even precarious position in politics and in parliament, and without which the constitutional framework of limited monarchy could never, perhaps, have been achieved.

In foreign affairs, success in Edward's policy demanded military victories to eradicate the humiliation which had been suffered at the hands of both the Scots and the French, between 1314 and 1328. This was, indeed, almost a condition of domestic peace. After the great days of Edward I, to quote Froissart, "the English will never love or honour their ruler unless he be victorious in war and especially against those who are richer and more powerful than they."⁵⁴ It was no accident that in July 1332 hostilities commenced against Scotland, followed shortly by war against France.⁵⁵ Successful warfare against Scotland and France bound the king and the nation closely together, with only rare interludes, for over forty years.

Both Edward's domestic and his foreign policies helped him to restore stability and peace to the country; but they brought their own complications. They increased the king's military and financial needs, and thus made him more dependent on his subjects who demanded victory but were unwilling to meet the cost. In particular, they increased the power of the Commons, still excluded from major decisions of policy, and brought

⁵⁴ Ed. Simeon Luce (*Soc. de l'Histoire de France*, 1869-78), I, 214. The above is a somewhat free translation.

⁵⁵ The first action in the French war was the attack by Sir Walter Manny on the Flemish island of Cadzand, in November 1337.

them once more close to a section of the magnates. They gave a new power to the community; but this was not yet matched by a new sense of responsibility. It would be long before the nation, outside the great magnates, outgrew the feeling that foreign affairs were really none of its business and that the king's needs were primarily an opportunity for his subjects' demands. A true sense of conjoint responsibility for government between the king and the nation, the ultimate basis of a new "composite" sovereignty, could only be slowly developed out of the traditions of personal monarchy. The lack of it was still plainly apparent in the early years of Edward III.

The situation encouraged extreme demands, both on the part of the ruler and on the part of the people. Edward was impatient of the slow processes of constitutional action, suspicious of Lancastrianism in his ministers, and restricted by the community's conservatism in military affairs. The feudal levy was thoroughly outmoded. It was not summoned after 1327.⁵⁶ Yet the Lords and Commons, for whatever reason, were reluctant to accept other methods of service which might develop the idea of a "national" army once entertained by Edward I.⁵⁷ Part of the second Statute which they obtained after Edward III's accession granted that no man should be charged to arm himself more than in the time of his predecessors or compelled to go out of his shire except in the face of enemy attack.⁵⁸ Thus the greatest inducement which Edward had to fall back on, to get the "modern" armies that he needed, was the inducement of pay. Given the outlook of his subjects on the subject of taxation, this drove him to the same expedients as those of his grandfather, and exposed him to what he probably considered to be the same unreasonable demands. The needs of war encouraged Edward to solve his

⁵⁶ With one exception, in 1385.

⁵⁷ One of the articles of Indictment against Roger Mortimer, in 1330, was that he had caused one man to be sent by each town in England, to serve for a year in Gascony at the town's cost; Henry Knighton, *Chronicon*, ed. J. R. Lumby (R.S., 1889), I, 456. This was an imitation of actions by Edward II.

⁵⁸ *Statutes of the Realm*, I, 255. The question is much more complicated than can be indicated above; it will be more fully discussed in Volume III.

problems by autocratic action and tended to overshadow his early constitutional principles by the idea of the necessity of the state.

Tenths and fifteenths were imposed in parliament; but extra customs were levied by negotiations with the merchants alone. To obtain their willing co-operation, Edward was forced to grant special favours to the wealthy English merchants and financiers on whom subsequently, after the failure of the Bardi and Peruzzi, he was largely to depend. The consent of the merchants, obtained under these conditions, was doubly questionable as a means of legalizing taxation on wool. The king's methods probably violated the spirit if not the letter of the *Confirmatio Cartarum*. They were accompanied by equally high-handed actions in the sphere of administration, as in the famous Ordinances of Walton in 1338, whereby he attempted to keep his government in England subject to a rigid control from overseas. Moved by a variety of pressures, the king seems to have taken clear steps, in these years, away from the settlement of 1330, in the direction of autocratic rule.

On the other hand, the demands of the subjects in the end outweighed those of the ruler. The country was willing, for the sake of military advantage, to meet most of Edward's requests: in 1338, for example, they granted half the wool in the realm, without any important conditions. But when military success was denied, the conditions began to be forthcoming.⁵⁹ In the parliaments of October 1339 and of January and March 1340 Edward was driven, like his grandfather, to save his foreign commitments by domestic concessions. Lords and Commons co-operated to exercise pressure upon him. Their demands seem to have been but feebly resisted by the government at home. This movement away from the spirit of 1330 was

⁵⁹ For these, see T. F. Tout, *Charters*, III, 69-102; and my chapter on the Chancery in *The English Government at Work, 1327-36*, ed. J. F. Willard and W. A. Morris (Medieval Academy of America, 1940), 181-3. There is much that remains obscure in this crisis, despite very fine work upon it by writers like Tout and Lapsley. I have discussed some of the problems in Chapter V below, where references to this recent writing will be found.

enhanced by the expanding political interest of the Commons. The pretence was discarded that foreign affairs concerned only the king and the Lords. In 1339, both Lords and Commons were fully informed regarding the foreign situation. In January 1340, the latter were consulted as to how they would "escape these perils,"⁶⁰ They laid down stipulations,⁶¹ and they made extensive suggestions relative to defence. In March 1340 Lords and Commons united to make a grant conditional upon the king hearing their requests; and their requests related both to the assumption by Edward of the title of King of France and the conduct of the war. Those that were turned into the famous four statutes of 1340, by a "committee" of estates including knights of the shire and burgesses, included what Stubbs called "the real act 'de tallagio non concedendo'."⁶² It is clear that, in these developments, the expanding claims of the king were on the whole more than matched by the expanding claims of the nation. On both sides the unprecedented national effort of the French and Scottish wars engendered a disposition to depart from the compromise of 1330. It needed only a spark to revive the political discord of the reign of Edward II.

This was provided by the action of the king in November 1340. Without consulting the magnates or his advisers in England, and without a preliminary trial, Edward took violent action against his leading ministers in England. He thus defied the ideas he had proclaimed in 1330, repudiated the Archbishop of Canterbury who had long been associated with them, and condemned the whole government by which they had been sustained. The issue was clouded by anti-clericalism and by friction between the king's "intimates" in Flanders and the great officers of state in England—the first recorded instance of a politically significant discord in the bureaucracy. But the true issue, nevertheless, was probably the question of

⁶⁰ *Rot. Parl.*, II, 108.

⁶¹ *Ibid.* They offered 30,000 sacks conditionally; otherwise, they granted 25,000 unconditionally.

⁶² *C.H.*, II, 401; *Statutes of the Realm*, I, 281-94.

whether or not the pragmatic settlement of 1330 was to survive the stresses of the war.

The crisis of 1340-1 which followed was divided logically into two sections. In the first, John Stratford appealed to the Lords and Commons against the king's actions. He restated the political principles of co-operation in government accepted in 1330. He went further and revived the Lancastrian appeal to the *populus* and something of their tradition of political trials.⁶³ He put before the whole nation the consequences of the actions of the king. The debates and appeals which he initiated made the crisis a landmark in the growth of the influence of public opinion upon politics and of the interest of the community in high matters of state. His policy was both astute and successful. The speeches of the Earls of Arundel and Surrey showed that they placed the principles of 1330 before the needs or ambitions of their wartime ruler, and that they were prepared, if they had to, to revive the opposition of Edward II's reign rather than sacrifice their full partnership with the king. The failure of any section of the community in England to give Edward solid support must have convinced him that any departure on his part from the settlement of 1330 would probably be disastrous. He conceded a reconciliation to the Archbishop and the discrediting of his advisers. He settled his quarrel *in pleno parlamento* though he did not concede Stratford's request for a parliamentary trial. Thus the first part of the crisis was, in spite of its comparative moderation, decisive in its effect on the constitution. It determined that the French War, in England at least, would strengthen the powers and claims of the people rather than of the ruler. Edward would have to win it in partnership with the Lords or Commons or not at all. The tendency towards limited monarchy not absolutism was to determine the pattern of the reign.

The second part of the crisis witnessed a degeneration in the struggle. It threatened to alienate the king permanently from

⁶³ The details of this crisis, with some arguments in favour of the above interpretation, are given in Chapter V below.

the nation and it did, in fact, probably destroy the unity of the opposition. It began with radical proposals which may have originated in the Commons;⁶⁴ and, despite all Edward's prolonged opposition, it ended in the famous statute of 1341. By this statute, it was laid down that magnates were to share in the appointment of ministers. The ministers were to answer complaints in parliament, with judgement of the peers. They should answer, either at the suit of the king or of another, for transgressions against Magna Carta or the laws and statutes of the land. These clauses were a far cry from the early suggestions that a committee of peers should supervise all important matters and reply in full parliament for their actions; but they were, nevertheless, both by what they contained and by the method by which they were forced on the king, a clear threat to the balance of the constitution which had been set up on Edward's accession to the throne.

At first sight, indeed, the statute of 1341 seems moderate enough. Stubbs had no fault to find with it. Neither the idea of judgement by the Lords in parliament nor the idea of responsibility of ministers to the nation or at least to the magnates, was new. The statute did not challenge the executive control of the king over his ministers; the king's servants were only answerable in parliament when accused of violating the law. Nevertheless, ministerial responsibility to anybody but the king had long been successfully opposed by the ruler; judgement by the Lords had probably been conceded in 1330 mainly as a protection to the magnates, not as a means of establishing a parliamentary control over the king's servants. The statute of 1341 not only remedied weaknesses shown by Edward's attack on his ministers; it also crystallized an advance in the importance of Lords and Commons and a change in the concept of parliament, neither of which can have been welcome to the king.

Thus the statute, despite its air of moderation, represented a real sacrifice by the monarch, and a departure from the

⁶⁴ Some evidence for this, as for other generalizations above, is given in Chapter V below.

political ideas of 1330. Edward long opposed it and his chief ministers made a public declaration of their forebodings about its consequences, inspired no doubt by the divided allegiance which it entailed. It undoubtedly pointed the way to the future; but it is questionable if its enactment in 1341, thrust upon an unwilling ruler deeply engaged in the French quarrel, was in the best interests of the state.

In 1341 and 1343, Edward revoked that part of the statute of 1341 which was not in conformity with custom and law. He has been charged with gross ill-faith in this revocation; and his action has been regarded as one more proof of his political irresponsibility. Yet he probably had a good deal of support for his action. Many Englishmen, we may guess, shrank from risking a recurrence of political unrest. They realized that the spirit of the constitution was as important as the letter. The earlier partnership between subject and ruler was something that could not be replaced by a formal statute based on mutual distrust. Good intentions alone, in politics, are never enough. Both sides had something to unlearn in their reactions since 1330 to the pressures and distresses of the war. It seems likely that both sides had the magnanimity and courage to abandon some mistaken notions in the period of readjustment that followed the statute of 1341.

Hence, in the end, all parties returned to the ideas of 1330. The demands of 1341 were rejected in favour of political harmony. What decided the issue was probably the French war and the need for strong rule and internal unity; but wise heads may have realized that the English were gaining more from the co-operation between king and people than they could by open conflict. They were creating a new instrument of rule and gaining new experience of politics, both of which were invaluable as bases for further constitutional advance. Meanwhile, the debates and proposals of 1341 showed in what direction their constitutional ambitions were turning. They showed that the way was being prepared for a vast expansion of parliamentary government and a new concept of political partnership between the subject and the king.

The longer, indeed, decisive constitutional change was deferred after 1341 the weaker became the position of the ruler. His dependence on the Lords and Commons in finance gradually became established beyond any possibility of evasion. The attempt of the king and the greater merchants to control the customs on wool to their mutual advantage ended, by 1347, with the disintegration of the "estate" of merchants.⁶⁵ The right of the Commons in parliament to assent to the customs was established in the period 1340-73.⁶⁶ At the same time, the practice of demanding concessions before grants was fully established. In 1348, for instance, the Commons not only made a grant on conditions; they also asked that when their petition had been answered, the answers should not be changed.⁶⁷ The establishment of the claims of the Commons was to be expected; though, as pointed out above, it was not inevitable. The principle of consent was now interwoven in the fabric of the constitution, and the Commons provided nearly all the new sources of income for expanding government. This was one of the ultimate causes of a great change in the balance of the constitution between 1341 and 1376.

Another cause of this change was in military service. Like Edward I, the king tried, in spite of his promise of 1327, to extend the service owed by the national militia and to compel £20 and £40 freeholders to assume the arms and obligations of the knights.⁶⁸ But, in the statute of 1351, he had to confess that his effort was a failure. No man, he promised, was to be obliged to find men-at-arms, hobelers, archers, and others, unless he held by such service, except by common consent and grant in parliament. If this statute may have referred primarily to distraint of knighthood, at least it shows clearly the attitude of his subjects. And this failure had, as pointed out above,

⁶⁵ *Finance and Trade under Edward III*, ed. G. Unwin (M.U.P., 1918), 221; my *Studies*, 77; Eileen Power, *Wool Trade in English Medieval History* (O.U.P., 1941).

⁶⁶ *Finance and Trade under Edward III*, 223; cf. my *Studies*, 74-8.

⁶⁷ *Rot. Parl.*, II, 201; *C.H.*, II, 418.

⁶⁸ The question of military service is discussed at greater length in Volume III.

consequences similar to those which had followed the failure of 1297.⁶⁹

In spite of commissions of array, Edward III's armies were, at least in theory, much more volunteer armies than those of his grandfather.⁷⁰ What compulsion there was behind them lay in the nation's need and the national agreement in parliament. Apart from that, they were still aristocratic armies, even though their rank and file was now composed largely of yeomen. They were in considerable part raised, led, and inspired, by the nobility. "Bastard" feudalism gave the loyalties within these armies a fluidity and a range which they had not possessed earlier; but it did not change their essential nature. The king and great lords were, indeed, competing more openly for those loyalties than in the days of territorial feudalism; but the time for a direct national allegiance to the king, by English soldiers, had not yet arrived. Thus, militarily, Edward III, though less exclusively dependent on the great magnates, was as dependent on the good will of his subjects as Edward I. By the end of his reign, a few great earls, with the Duke of Lancaster, would seem to have held almost a balance of military power. The rise

⁶⁹ See Volume I, Chapter V. The statute of 1351 is given in *Statutes of the Realm*, I, 320; cf. *Rot. Parl.*, II, 239.

⁷⁰ Our knowledge of military service in the fourteenth century is being revolutionized by modern studies. See A. E. Prince, "The Indenture System under Edward III," in *Historical Essays in Honour of James Tait*, ed. J. G. Edwards, etc. (Manchester, 1933), 283-97; "The Army and Navy," in *The English Government at Work, 1327-36*, ed. J. F. Willard and W. A. Morris (Camb., Mass., 1940), I, 332-93; "The Payment of Army Wages in Edward III's Reign," in *Speculum*, XIX (April 1944), 137-60; "The Importance of the Campaign of 1327," in *E.H.R.*, L (April 1935), 299-302. Equally important are: N. B. Lewis, "The Organization of Indentured Retinues in Fourteenth-Century England," in *Transactions of the Royal Historical Society* (4th series), XXVII (1945), 29-39; "An Early Indenture of Military Service, 27 July 1287," in *Bulletin of the Institute of Historical Research*, XIII (1935), 87-9; "An Early Fourteenth-Century Contract for Military Service," in *B.I.H.R.*, XX (May-November 1944), 110-18; "The English Forces in Flanders, August-November 1297," in *Studies in Medieval History Presented to F. M. Powicke*, ed. R. W. Hunt, W. A. Pantin, R. W. Southern (Oxford, 1948), 310-18. See also B. C. Keeney, "Military Service and the Development of Nationalism in England 1272-1327," in *Speculum*, XXII (October 1947), 435-49. For other aspects of the problem, see K. B. McFarlane, "Parliament and 'Bastard' Feudalism," in *Trans. Royal Hist. Soc.*, XXVI (1944), 53-79, and "Bastard Feudalism," in *Bulletin of the Institute of Historical Research*, XX (1945), 161-80. See also H. M. Cam, "The Decline and Fall of English Feudalism," in *History*, XXV (December 1940), 216-33.

of the "new" armies was very far, in the fourteenth century, from redounding automatically to the advantage of the king.

Thus, in this period of co-operation, both Commons and Lords strengthened their position as against their ruler. Though the power and prestige of the former under Edward III have been exaggerated, their political advancement was rapid and, in its ultimate consequences, revolutionary. In England, their policy was less ambitious but more successful than that of the Commons in France.⁷¹ Its full consequences would probably not become apparent until it was supported by a conjoint action of the Commons and the Lords. For this, the Commons were not yet entirely adequate, despite their experiences under the second Edward and their recent initiative. Their traditions and outlook both precluded them from full participation in major political decisions. During this period circumstances combined to prepare the way for a full partnership of the Commons with the magnates; but it was on the decision of the Lords, not of the Commons, that the realization or non-realization of this partnership in practical politics was eventually to turn.

It is, indeed, perhaps not going too far to suggest that it was on the attitude of the magnates towards their political and social inferiors that the whole future structure of English politics now depended. Apart from the ruler himself, the magnates, not the Commons, still dominated the political life of the nation. They still had the political skill, experience, traditions and power. They were still to provide the great leaders, like the Appellants of 1388. They commanded regional loyalties,

⁷¹ The Third Estate in France was given its opportunity by the failure of both monarchy and aristocracy in the early campaigns of the Hundred Years War. But it failed, under Etienne Marcel (1356-8), even more than the aristocracy had failed. Its aim was too ambitious, its political experience too small, its power in reality too limited. Besides, France was confronted with dangers which made a strong executive seem necessary for survival, and a strong executive would only be found under the monarchy. Hence, instead of conceding principles of limited monarchy based on the support of magnates and Third Estate, Charles V (1364-80) was able to take another important stride towards absolutism.

dominated opinion, were the great representatives of the community of the realm. Together with the bishops, who were their ecclesiastical counterpart, they still ruled the political scene. The future constitution of England would be determined by whether their aristocratic impulse led them to accept autocracy wedded to their class interests, or reject it by identifying their interests with the wider community of the realm. It was their choice of the latter, with all its risks and uncertainties, which made it possible to maintain the medieval concept of limited monarchy in face of the growing power of the national monarch. And the remarkable fact seems to be that the way was finally paved for this momentous choice in the period of royal and aristocratic co-operation, between 1343 and 1371.

Meanwhile Edward III restored the monarchy for the last time on the traditional basis. How far all the details were intentional, it is impossible to say; but we can perhaps see enough evidence of plan to talk of a restoration of the monarchy. The details seem to form part of an integrated whole. Perhaps the term restoration is, indeed, somewhat pretentious, for all that Edward seems to have done was to go back to the ideas and practices of 1330, though these were undoubtedly broadened somewhat as a result of the crisis of 1340-1. Nor had the monarchy been so weakened by the events of 1340-1 that it needed to be "restored." But the system of 1330 had certainly been seriously challenged. And Edward's re-creation of harmony after 1341 was so complete and successful, and lasted over such a long period (1341-71), that it almost amounted in itself to a restoration of the monarchy.

First and foremost, as a prerequisite for renewed harmony in the nation, was the achievement of military success. This was fundamental. It was amply established. Crécy, Neville's Cross and La Roche-Derrien, in 1346, anticipated Pitt's glorious year of victories in 1759. They were reinforced, ten years later, by the great victory of Poitiers. Secondly, there were the pomp and pageantry of the new chivalry, binding Edward and his nobles closely together. The tournament

never flourished more than in the years after 1340.⁷² The Round Table was created in 1344, with a new tower at Windsor (still standing) to house the fellowship. Participants in tournaments and fellowships were bedecked with unprecedented sumptuousness and colour. There were pageantry and mimicry, feasting and dancing, culminating in the stately Order of the Garter in 1348. All this would have arisen, in any case, out of the changing chivalric ideals of the fourteenth century and out of the process of the war; but it undoubtedly received a special impetus from Edward III. This impetus was so strong that, compared with his predecessors, Edward can almost be said to have started a new pattern of monarchy. It was a monarchy in which the loyalty and pageantry of feudalism were concentrated on, and used by, the ruler of the state.

Coupled with this was the rise of nationalism. Whether or not Edward III deliberately fostered this or realized its significance, it is impossible to say. It was partly a by-product of the national state, partly a consequence of the Hundred Years War, and partly an expression of political harmony. In 1362 parliament ordered English to be spoken in the law courts, and heard the first King's speech in the same tongue.⁷³ Edward wore tunics emblazoned with English mottoes. English nationalism expressed itself, as it had under Edward I, by opposition to the Papal claims. Well-known examples are the famous acts of Provisors and Praemunire of 1351 and 1353.⁷⁴ In 1343 the Statute of Carlisle (1307) was produced and

⁷² In 1342 there were three, in one of which John of Beaumont was killed. Particularly outstanding were the years 1347 and 1348, after Crécy, and the year 1357 after Poitiers. In 1344 Edward and nineteen others held the lists against all the world; J. H. Ramsay, *Genesis of Lancaster*, I, 306. In the same year, the earl of Salisbury received wounds of which he died.

⁷³ *Chronicon* of John of Reading, ed. J. Tait (Manchester, 1914), 155. It was one of a number of popular and conciliatory measures by which Edward celebrated his fiftieth birthday, including a strict control over purveyance by the king's household.

⁷⁴ The former ordered the rights of canonical electors and of spiritual and lay patrons to be respected. It condemned Papal Provisions and ordered all Provisors or their proctors to be arrested and imprisoned until they had made satisfaction. The latter imposed forfeiture and outlawry on those who sued in foreign courts for matters cognizable in the king's courts. Both resulted in an increase in the power of the king though neither was fully carried out.

examined in parliament, and a new protest was sent to Avignon against Papal provisions and reservations.⁷⁵ In 1350 Edward wrote to the Pope asking that a Cardinal's hat be given to an Englishman.⁷⁶ In 1365 England was said to have discontinued the payment of Peter's Pence.⁷⁷ In 1366 the three estates in parliament rejected Urban V's demand for the arrears of the tribute begun by John. Whatever the forces or motives behind these various actions, it remains true that Edward III's monarchy was marked, probably for similar causes, by the same national aggressiveness in ecclesiastical matters as that of Edward I.

In the third place, the practical co-operation of the king and the magnates was restored. The support of the Lords for the royal policy was shown by their pledge, in the parliament of 1344, to serve in person abroad. They were getting glory, power and profit from the foreign wars. Whilst these wars prospered, their co-operation was assured. The Commons were again left in comparative isolation. When the king and the magnates were in harmony, there was little the Commons could do except watch over their own somewhat narrow interests. In 1348, when asked for advice, they firmly divested themselves of responsibility for the war.⁷⁸ In 1354 they again declared that whatever should be settled regarding peace, by the king and the great men, would be agreeable to them.⁷⁹ It is not surprising that Edward summoned great councils without them. The French war, indeed, placed the Commons in a dilemma. National honour and safety drove them to support the struggle; but they seemed to be the chief sufferers. War was not primarily their business. Their losses were more

⁷⁵ *Rot. Parl.*, II, 144.

⁷⁶ *Chronicon* of Geoffrey le Baker, ed. E. M. Thompson (Oxford, 1889), 111.

⁷⁷ But see James Tait in the *Chronicon* of John of Reading, 322.

⁷⁸ *Rot. Parl.*, II, 165. They said that whatever the king would settle, with the advice of the great and wise men of the council, would be acceptable to them.

⁷⁹ *Ibid.*, 262. The way in which the Chamberlain pressed for an explicit answer shows that the assumption of responsibility for foreign affairs by the Commons may have been partly thrust upon them by the king. Indeed, the Commons were still very reluctant to accept this responsibility in 1383; *Trans. Royal Hist. Soc.*, XXVIII (1946), 30.

apparent, to them, than their gains. It is no wonder that they slipped more and more into the rôle of critics. Nevertheless, it is just in these years that we must place their full participation in foreign affairs, and the final superseding of the ancient tradition that high politics were largely beyond their interest. In 1352, for example, the Chief Justice William Shareshul not only explained the state of the war to both Lords and Commons; he also placed on both the responsibility for its past conduct.⁸⁰ He asked the advice of both about its future, suggesting the novel expedient of a discussion between a committee of Lords and Commons,⁸¹ to guide the decisions of the latter. Whether or not this was accepted, the very suggestion shows the extended scope of the Commons' interest accepted or insisted upon by the ruler. It suggests that, though the alliance between king and Lords was the cornerstone of Edward's policy, it could not, after 1341, exclude the Commons from high policy as had probably been intended in 1330. On the contrary, it had to have as its basis a national, and not only a sectional, agreement on the most important affairs.

The prelates, too, were aligned with the barons in support of the ruler. The proceedings against John Stratford were annulled in 1345.⁸² A clerical chancellor and treasurer were reappointed. Royal promotion filled the episcopacy with the friends or ex-ministers of the king as well as of his magnates. The prelates seem to have lost all touch with their great tradition of mediation, though in truth their mediation was not actually required. In any case, the basis for such a tradition had been very largely destroyed. The Pope no longer gave the kind of leadership, nor the bishops the kind of obedience, which it required. This was to be shown very clearly in the days

⁸⁰ *Rot. Parl.*, II, 237.

⁸¹ *Ibid.* There is a tradition that on this occasion the Commons, in the words of Stubbs (*C.H.*, II, 428), "refuse to delegate their powers to a committee," but the evidence for this is far from clear. They were not asked to delegate their powers. The committee they elected was to report back to themselves. Nor is the evidence very clear that they refused.

⁸² He had already been reconciled to the king in 1341; Geoffrey le Baker, *Chronicon*, 75, 247.

of the great Schism. The relations with the Papacy of a century before had been replaced by a working agreement, in which the English king was no longer dependent on the Pope for political support. Indeed, the shoe was now, perhaps, upon the other foot. The French wars and the Babylonian captivity, along with the growth of nationalism, seriously weakened the Papal influence and prestige in England. John Wyclif was already teaching in the schools of Oxford. Popular hostility to the church was beginning to stir. In face of this, the prelates tended to turn to the king, not to the Pope, for support. For good or ill, the higher clergy were, at the moment, bound to the cause of the national monarch.⁸³ Their co-operation was, in spite of Edward's anti-clericalism in 1340, a part of the Edwardian restoration which was, until the end of the reign, definitely assured.

Two other developments marked the alliance between king and magnates. One was the royal marriages.⁸⁴ Whether or not Edward III tried to build up the royal power by these marriages, the fact has not escaped historians⁸⁵ that the marriages helped to break up the opposition which had

⁸³ Though it would be a mistake to exaggerate their dependence; see my note "A Letter of Edward III to his Chancellor and Treasurer," in *E.H.R.*, XLII (April 1927), 248-51. The events narrated in this note throw a good deal of light on the attitude of king and nation to the church.

⁸⁴ Those of Edward the Black Prince (1361: to Johanna of Kent, daughter and heiress of Edmund Earl of Kent) and Lionel (1342: to Elizabeth de Burgh, heiress to William de Burgh, Lord of Connaught and Earl of Ulster. Her vast possessions included a third of the Gloucester inheritance) were not unimportant; but they were far overshadowed by that of John of Gaunt, the third son, in 1359 to Blanche, the heiress of the Lancaster estates. These, falling in 1362, made John the Earl of Lancaster, Leicester, Derby, Salisbury and Lincoln. Thomas of Woodstock, the youngest son (later Duke of Gloucester), in 1376 married Eleanor Bohun, a co-heiress of Humphrey Bohun, Earl of Hereford. John of Gaunt's son Henry (Henry Bolingbroke) married Mary, another co-heiress of Humphrey. The Bohun earldoms were those of Hereford, Essex and Northampton. The only one of Edward III's sons who did not marry an English heiress was Edmund of Langley, Earl of Cambridge, who in 1362 married Isabella of Castile. He was the future Duke of York. The daughter (Philippa) of Lionel, who became Duke of Clarence in 1362, married Edmund Mortimer, Earl of March, great-grandson of the traitor of 1327. The Black Prince was already, before his marriage, lord of Cornwall, Wales and Cheshire.

⁸⁵ Tout, *Political History*, ed. W. Hunt and R. L. Poole (London, 1905), III, 428; Stubbs, *C.H.*, II, 436.

confronted earlier kings, especially that of Lancaster and the Marchers.⁸⁶ Partly through these marriages, the royal influence was firmly entrenched in the west, south and centre of England. Only the north kept its old regional independence, with the Percys, Nevilles, Mowbrays, Grays and Scropes. Even in the north, Lancastrian influence was strong; and after 1362 the broad estates of the house of Lancaster, with its five earldoms, were in the hands of the king's son, John of Gaunt.⁸⁷ It seems safe to guess that these marriages, however natural in view of the number of Edward's children and the nationalism of England, were part of an attempt to cement a close alliance between the magnates and the Crown.⁸⁸ The dangers they were to create lay in the future. They were not readily apparent in the days of Crécy and Poitiers.

The second development was the famous Statute of Treasons of 1352, as it may have represented the final ending of old feuds. By defining treason moderately and clearly, this statute formed an important part of a general conciliation.⁸⁹ It militated against the "political" trials which had marked the reign of Edward II. Though, as Miss Clarke has pointed out,⁹⁰ it certainly protected the king's ministers, it was, on the whole, a safeguard for the magnates. Noticeable by their absence

⁸⁶ Bigod had opposed Edward I, along with Bohun of Hereford, in 1297. His estates belonging to the earldom of Norfolk went to Margaret Bohun, who married Walter Manny, one of Edward's famous captains, after 1353. Professor Tout talks of Edward gaining for his family the territories of the "rival houses" of Lancaster and March; but he spoke in anticipation of the famous fifteenth-century quarrel. In the fourteenth century the two houses had, on the whole, been very closely allied.

⁸⁷ Joan Beaufort, daughter of John of Gaunt, married as her second husband Ralf, Lord Neville of Raby. Other northerners were in the retinue of John of Gaunt. The north had not always been loyal to Edward II, though its neutrality had been the condition of Edward II's success in 1322. Its defection was to bring about the fall of Richard II in 1399.

⁸⁸ Other acts rewarding the magnates in these years are quoted by T. F. Tout in *Chapters*, III, 188. Professor Tout also gives important facts regarding the earls of this period, *ibid.*, 189, 190. His remarks on the Lancaster palatinate of 1351 are particularly important.

⁸⁹ For a somewhat different view of the act, see I. D. Thornley, "The Act of Treasons, 1352," in *History*, VI (July 1921), 106-8. The statute is printed, with some comments, in Volume III of this work.

⁹⁰ *Fourteenth Century Studies*, ed. L. S. Sutherland and M. McKisack (Oxford, 1937), 130-1.

were articles of indictment for treason which had been used under Edward II, such as the "accroaching" of royal power. New articles of treason were to be defined, not by the king or his council, but "in parliament." This act did something to end the possibility of a recurrence of the blood feuds and executions which had characterized the early part of the century. It was accompanied by the annulment of the condemnation of Roger Mortimer, Edmund Earl of Arundel, and John Maltravers.⁹¹ Both Edward Despenser and Roger Mortimer the son, representatives of houses which had been deeply involved in the struggles of Edward II, had been made knights of the Garter.⁹² The ancient feuds of Edward II's reign might seem to have been finally allayed.

IV

THIS second restoration of the monarchy by Edward culminated in the favourable treaties of 1357 and 1360 with the Scots and the French. In theory, England was to be enriched, for years to come, by ransom and tribute from both. Edward was now forty-seven. In thirty years he had raised his country from internal and external degradation to a position of stability and power. His monarchy was solidly buttressed by a personal prestige greater than that of almost any previous ruler.⁹³ It seemed to be supported by every important section of the state.

Thus the restoration was triumphant; but it was hardly likely to be enduring. The military success on which much depended was deceptive and incomplete. The war against France continued, fought also on the battlefield of Spain. The victory of the Black Prince at Nájera in 1367 did not prevent

⁹¹ *Ibid.* John Maltravers had been condemned in parliament in 1331 for traitorously encompassing the death of the Earl of Kent.

⁹² Geoffrey le Baker, 109. Roger Mortimer was made Earl of March in 1354; Henry Knighton, *Chronicon*, ed. J. R. Lumby (R.S., 1895), II, 77.

⁹³ See my comments in *Chancery under Edward III*, 126.

the French candidate, Henry of Trastamara, from obtaining the throne of Castile.⁹⁴ When war broke out again in France, in 1369, the French obtained invaluable support from their Castilian allies. Under Charles V, they consolidated their ranks and adopted new methods of warfare. The absorption of any considerable part of France was beyond the resources even of the efficient English state. The burden of war was certain to increase and its successes were not likely to be repeated. This set the stage for the final breakdown of the great policy of conciliation and national harmony which had been inaugurated by Edward III.

The breakdown owed something, in the second place, to Edward himself and his sons. It was precisely in this period of external crisis that Edward III's health, or at least his mental alertness, began to decline. After 1369, he gradually slipped more and more into the background of affairs. The Black Prince, the natural inheritor of his throne and his mantle, was also stricken after 1370. The slow decline of these two famous warriors created the prospect of a minority to complicate affairs.⁹⁵ A minority was always a time of danger in the Middle Ages. Even the prospect of it was a threat to the régime established by Edward. For all its stability, this still rested largely on the personalities of Edward III and his son. It had been built up by them and around them. That they should both be taken away at roughly the same time was a cruel and unexpected blow.

In the third place, the breakdown may be said to have been inherent in the political situation. No political structure, however excellent its foundations, could contain indefinitely, without change and expansion, the dynamic energies of the fourteenth-century state. The political order set up by Edward had been astonishingly successful; but it was still at bottom an evasion of, rather than a solution to, the great constitutional problems raised between 1308 and 1327. It was intended to

⁹⁴ The French, led by Bertrand du Guesclin, supported Henry against Pedro the Cruel, the candidate of Edward the Black Prince.

⁹⁵ The Black Prince's son Richard was, in 1376, only nine years old.

thwart, as well as to express, the ideas and ambitions which had been strong thirty years earlier. It was based in the final analysis, even if only by accident, on an isolation of the two great political groupings of Lords and Commons which, however natural in view of the social outlook of the period, had been gradually becoming less acceptable ever since the days of Simon de Montfort, and was finally defeated by the very unity of the English nation which Edward III had himself done so much to achieve. It is certain that only a slight dislocation of the great structure erected by Edward was needed to precipitate a struggle which would, in its final outcome, determine the whole political balance in the state.

Thus, after 1369, the way was paved, by military failure abroad and by declining leadership at home, for a recurrence of political unrest. It was no accident that the first of a long series of political crises occurred in 1371. In this year certain magnates lent their support to the Commons in a sweeping condemnation of the king's clerical ministers for their conduct of the war. The issues were complicated, once more, by anti-clericalism which was no doubt very genuine: John Wyclif may have been present in the debates of the parliament of 1371. Nevertheless, the most pressing single question may have been the conduct of the war. But beneath both was the old claim by Lords and Commons to an extended participation in the highest affairs of state. It is evident that, however much the opposition professed personal loyalty to Edward, and however much they made use of anti-clericalism, they revived by their attack on the king's ministers the ambitions, if not the claims, of 1341. Edward's dismissal of his treasurer, Thomas Brantingham, and of his chancellor, William of Wykeham, Bishops of Exeter and Winchester respectively, was a postponement, rather than a settlement, of the constitutional problem posed by the attack on the king's ministers. The crisis of 1371, although it had no immediate repercussions, was a solemn notification that the great Edwardian compromise of 1330 was at length quite incapable of successfully reconciling the conflicting interests in the state.

In the first place, it marked an important change in the policy of some of the Lords. Whether John of Gaunt or the Earl of Pembroke was behind the Commons,⁹⁶ it is clear that some lay magnates broke away in 1371 from complete support of the ruler. There was a clear rift in the harmony between king and magnates which was the ultimate condition of Edward III's political success.

The crisis also affected the Commons. It destroyed the partial isolation in which they had tended to be placed by the policy of Edward. It re-established a co-operation between Commons and Lords which was the ultimate basis of opposition to the government in the years to come. By its implications,⁹⁷ it asserted the interest of the Commons in the highest range of government, without which an alliance between Lords and Commons would have lost a good deal of its effect. After 1371, the ancient tradition that the latter were not entitled to participate in some aspects of government may be said to have been discarded. They were ready, in future, to act as effective allies with the magnates in opposition to the king.

The crisis, finally, seems to have affected the prelates. During its course, not only was the efficiency of the leading clerical ministers challenged, but also strong demands were made on the clergy for financial aid; and these were accompanied by outspoken parliamentary attacks on the wealth of the clergy. These events not only showed how strong anti-clericalism was; they also, perhaps, helped to break down the attachment of the bishops to the Crown. Dependence on the monarch and Pope had tended to isolate the bishops from the nation. It had not even brought them security. The ruler was prepared to surrender them to secular hostility. If they would safeguard their position in the state, in face of rising anti-clericalism, they would have to look beyond the ruler for

⁹⁶ The question is discussed in my *Chancery under Edward III*, 125-7, and in T. F. Tout's *Chapters*, III, 271.

⁹⁷ The petition against the king's ministers in 1371 was amongst the petitions of the Commons; *Rot. Parl.*, II, 304. It was said, however, to represent the views of all the earls, barons and Commons.

support. Some of them, at least, would have to identify themselves with national aspirations and political movements of reform. At least one, William of Wykeham, and possibly more, did indeed move towards support of Lords and Commons and opposition to the Crown. The bishops of the next two decades showed no real unity of political action. Their general dependence on the ruler was not ended; but they were drawn into the politics of the nation. They lost any cohesion they had once possessed in political action and were quite incapable of sustaining political harmony in the state.

Cumulatively, the break of 1371 in the Edwardian system proved, in fact, to be decisive.⁹⁸ In 1373 the Commons again initiated a movement of opposition. By asking for a committee of three bishops, three earls, and two barons, to advise them,⁹⁹ they made an open bid for the backing of the Lords. The meeting of Lords and Commons came to nothing. We cannot be sure what was behind it and who really initiated it. But it was a constitutional development of great importance as providing an effective means of concerted parliamentary action. It showed that the co-operation between Lords and Commons, revived in 1371, was probably destined to endure.

The Edwardian restoration finally fell apart in the famous assembly of 1376, known to contemporaries as the Good Parliament. In this parliament we find a strong movement of opposition by the Commons; clear support for them by a number of magnates and one or two of the bishops; and a revival and extension, by both Lords and Commons, of demands which had been put forward in 1341. The far-reaching claims

⁹⁸ Perhaps the petitions of the Commons in 1372 indicate a new sense of solidarity and a disposition to criticize. They asked that no lawyer and no sheriff be returned to parliament as knight of the shire. The reason was that the lawyers had caused petitions to be presented in parliament which did not affect the Commons as a whole. The Commons also petitioned against the practices of some civil servants; see Tout, *Chapters*, III, 282; my *Chancery under Edward III*, 130.

⁹⁹ The personnel of this committee has been much discussed but need not detain us. Any distinction between "court" and "Lancastrian" affiliations of the magnates in 1373 was probably unimportant compared with the distinction between those who did and those who did not support an opposition to the Crown. But see T. F. Tout, *Chapters*, III, 285; my *Chancery under Edward III*, 131.

and conjoint action of Lords and Commons constituted between them a transformation of politics. Whatever the outcome of the movement, it seems likely that a new period in the political history of the century had begun.

The immediate causes of the crisis were probably substantially the same as those of 1371. They were: a certain amount of maladministration, the consequences of a losing war, and the increasing senility of the king. John of Gaunt's ambitious effort against France in 1373 had achieved nothing. There was an increasing desire for scapegoats. There was possibly jealousy between the ailing Black Prince and the over-mighty John of Gaunt, king's lieutenant in the Good Parliament. Deep beneath, animating many sections of the community, was the mounting pressure for radical constitutional change.

The Good Parliament was begun by a request by the Commons for a second advisory committee of magnates. The initiative apparently lay beyond question with the "lower house."¹⁰⁰ Fortified by the advisory committee, the Commons now moved forward to a direct attack on the ministers and advisers of the Crown. In spite of John of Gaunt's open hostility, they "impeached" William Latimer and others. The distinctive features of the new process were accusation by the Commons and judgement by the Lords. The way had been paved for it as early as Edward II's reign; but nevertheless some startling and perhaps revolutionary political ideas were involved.

In the first place, there was the idea of the responsibility of the king's ministers to the nation as well as to the ruler, probably rejected or evaded in 1341 and 1343. In the second place, there was the material for a concept of parliament as the High Court

¹⁰⁰ The problem of the reality of the initiative of the Commons is still, however, obscure. It is doubtful if the Commons elected their speaker, Sir Peter de la Mare, steward of the Earl of March, without a preliminary assurance that the earl was in favour of their programme; though T. F. Tout suggests (*Chapters*, III, 294) that this election secured the support of the earl. Some evidence for the above views on the Good Parliament will be found in Chapter VI below.

of the Realm.¹⁰¹ The theory was not yet adumbrated. Nowhere, in all these proceedings, did parliament itself claim the attributes of a court. Nevertheless, the claim lay in the logic of the actions of Lords and Commons. When the Commons insisted on trial in parliament, and the Lords co-operated by giving judgement against the wishes of the king's lieutenant they did, in effect, transfer the attributes of justice in parliament from the king and his council to the Lords and Commons, whatever particular theory they professed.

This involved ultimately, in the third place, a new concept of the general nature of parliament. It strengthened the idea that the assembly no longer consisted of the king, discussing with his subjects, but expressed the conjoint action of the King, the Commons and the Lords. This was a challenge to the subordination of subjects to the king in parliament, entailed by the traditions of the personal monarchy. The subjects shared Impeachment with the monarch and had, indeed, the more important share. Impeachment and the events of the Good Parliament between them went far to reducing the king to the level of one of the parliamentary "estates." They thus paved the way for the transition from the sovereignty of king, to the sovereignty of the king in parliament, which was to receive further practical expression in the reign of Richard II.

In the fourth place, and finally, the Good Parliament demonstrated the decisive nature of the alignment of politics which had been shaping since 1371. It was through this that, ultimately, the power of the personal monarch was to be finally challenged and partly overthrown. It was this which really defeated John of Gaunt in 1376; it was this which made certain, in 1399, the triumph of his son. Indeed, it can be said to have become, in these years, the dominant feature of English political life.

¹⁰¹ The whole problem of parliament as the High Court of the Realm will be discussed in Volume III. Meanwhile some views have been offered in the article on "The 'Political Revolution' of the Thirteenth and Fourteenth Centuries in England" (*Speculum*, XXIV, 502-10), already cited, and in "Tendencies in Fourteenth Century Development," *Report of the Annual Meeting of the Canadian Historical Association*, 1946, 18-29. It is hardly necessary to say that the subject is under debate.

One other feature of the Good Parliament should possibly be mentioned. This was the ancient political expedient of a reforming council. The Lords and Commons obtained its election in the midst of the proceedings against Latimer. Though its functions were carefully limited to advice,¹⁰² it represented a method of reform which had bitter memories for the ruler. To back up their general dissatisfaction with the government, the Commons presented a hundred and forty petitions which have been described and commented on by Bishop Stubbs.¹⁰³ The most significant of them illustrated the importance of the knight of the shire and reflected his interests. This was a natural corollary to the political activities of the knights in this parliament. It reminds us that those political activities at the centre of government were themselves a reflection of intense local activities by the knights and burghesses. But the real importance of the whole reforming movement of 1376 nevertheless lay in Impeachment and all that it connoted in political affairs.

There is no doubt that there was a bitter opposition to the new procedure by John of Gaunt, the king's lieutenant. John's character, and to some extent also his policy, are still wrapped in obscurity.¹⁰⁴ Though John was heir to the Lancastrian tradition, he probably defended the royal interests as he conceived them, by reason both of his official position and of his nearness to the throne. To the king's representative, the movement of 1376 was likely to appear, in spite of the boundless patriotism of the reformers, as a serious menace equally to the efficiency of government and to the prerogatives of the Crown. It revived the discord of 1341 and, still more, of 1321. It threatened to undo much of the work of Edward III. Thus it may have been opposed by John of Gaunt from very mixed motives, both enlightened and reactionary. John certainly obscured the ends of justice by shielding Latimer and Lyons and Alice Perrers during the Good Parliament, and in rehabili-

¹⁰² My *Studies*, 96.

¹⁰³ *C.H.*, II, 453-4.

¹⁰⁴ Partly due to the hatred of "patriotic" chroniclers; see the *Chronicon Angliae*, translated in Chapter VI below.

tating them after its end. He later went far beyond what was wise or necessary in annulling all the acts of the parliament,¹⁰⁵ and in disgracing the Earl of March. He may have been ill-advised in turning Impeachment against William of Wykeham. He seems to have been fairly vindictive against his opponents and blind to their good intentions. He was probably unaware of the deep needs of the country. He never was an inspired politician. Some of the changes he opposed in 1376 were probably overdue. Nevertheless he had a strong case in objecting to the methods of the Good Parliament. There can be no doubt that he was right if he felt that the new forces and ideas of 1376, unless carefully handled, might be disastrous for the constitution. They might initiate, and in fact they did initiate, a period of political struggle and disharmony comparable to that of Edward II. England still needed a strong monarchy. She was still engaged in a great military struggle. She could not afford another bitter contest, with all its threat of paralysis and civil war, between the community and the king. Nor is it likely that the reformers of 1376, though they foresaw some, foresaw all the consequences of their acts. Patriotism was not only on their side. This was a great crisis in which good men of all kinds could be deeply divided. The changes which were so triumphantly and with such certainty introduced in 1376 were likely, in spite of good features, to initiate a new period of uncertainty and confusion and to bring to an end the long and on the whole not inglorious experiment in compromise and conciliation initiated by Edward III. This was made all the more certain by the death of Edward himself in 1377 and the succession of his young grandson Richard II.

V

Thus the reign of Richard II began in conflict and was to end, for the ruler at least, in disaster. It was disturbed by, and went

¹⁰⁵ He said that it was no parliament at all; *Chronicon Angliae*, 102-3.

far to settle, some of the deepest constitutional problems of the Middle Ages: the terms of the political co-operation between the ruler and the people; the nature of the parliamentary assembly; the location of sovereignty in the state. It was further complicated by a rapid process of transition from medieval to modern conditions and by an intensification of the problems of nationalism and bureaucracy. It was finally handicapped by beginning with the collapse of the political structure built up by the third Edward and with a Minority. It is no wonder that its course bore a curious resemblance to that of Edward II, in which many of the problems confronting Richard had first been adumbrated; and that it ended with the tragedy of Edward being duplicated by that of the able and, in some ways at least, more attractive Richard, in 1399.¹⁰⁶

A further word should be said of Richard's Minority, for this had a constitutional importance which is sometimes overlooked. It was to have a significance in history comparable to that of Henry III. It intensified the importance and claims of Lords and Commons and further diminished the prerogatives of the Crown. It was a period of rule by continual council, of the assumption of extensive responsibilities for government by the Lords and Commons in parliament, and of a close tutelage of the king. In theory, the gains of the Lords and Commons were strictly temporary. When Richard inherited his full estate, he could claim all the powers of Edward III, including the last restoration carried out by John of Gaunt. But there was, so far as we know, no formal assumption of government by Richard comparable to that of Henry III or Edward III. Use and wont are powerful agents in constitutional change. Whilst Richard's monarchy was potentially far more powerful

¹⁰⁶ The reigns lasted roughly the same length of time, if we deduct two or three years from Richard's, for his minority. In view of the somewhat favourable opinion of Richard in these pages it is proper to note that Dr. N. B. Lewis, who takes a special interest in Richard's reign, compares him, in a friendly note to the present writer, on the whole unfavourably with Edward. He finds that Richard's arbitrariness and violence were no less harmful to the state than Edward's indolence and inefficiency. He was superior in intellectual and aesthetic capacity, but his caprice and selfishness made him the less attractive character.

than that of Henry or Edward at their accession, it was also, through its recent losses, harder to restore. It is possible that this restoration, rather than his well-known design of absolutism, provides the key to most of Richard's early reign.

It is hard, at this distance of time, to determine what capacity Richard had for achieving it. His character has been subjected to many interpretations. Wallon, giving the first modern biography, found much good to say of Richard.¹⁰⁷ He had no doubt of his intelligence. Stubbs¹⁰⁸ thought that Richard showed not only traits of nobility but certain proofs of mental power. It was the frivolity of his court which spoiled a promising young prince and filled him with ideas of royalty quite incompatible with the actual current of political history. His character degenerated. Royalty aroused despotic and impatient impulses in him. There was a marked change in his behaviour after 1394. His mind, already unsettled, may have lost its balance. But Stubbs would not press the charge of insanity. To him, Richard remained the victim, partly innocent, of a great pitched battle "between absolute government and the cause of national right," for which the frivolity and selfishness of Edward III was largely responsible. Some recent writers have not been so charitable.¹⁰⁹ Richard's later actions were, according to Mr. Steel, essentially the product of a "schizoid mind."¹¹⁰

In spite of these conflicting views, it still seems to be certain that Richard was intelligent. Nor is there, perhaps, any convincing reason to doubt his sanity. Both Richard and his opponents went to extreme lengths in their actions; but they were driven to extremism by circumstances as well as (in some cases) by inclination. Perhaps no one will ever disentangle all their motives. Seldom have private interests and enmities been

¹⁰⁷ *Richard II, Episode de la Rivalité de la France et de l'Angleterre* (Paris, 1864).

¹⁰⁸ *C.H.*, II, 486, 487, 500, 514, 535. Cf. Hallam, *View of the State of Europe during the Middle Ages* (4th edition, 1826), III, 97-104.

¹⁰⁹ The best is T. F. Tout, *Chapters*, III and IV.

¹¹⁰ *Richard II* (Cambridge, 1941), 174. But this view has been largely discounted by V. H. Galbraith, "A new Life of Richard II," in *History*, N.S., XXVI-XXVII (March, 1942), 223-39.

more completely mixed up with considerations of public welfare and genuine problems of state. Richard was capricious and extravagant; but he could sacrifice his personal feelings, on occasions, for the sake of his policy. His policy seemed at times to reflect only his own vanity; but it was nevertheless a logical reaction to the circumstances of his time. Men are never simply the creatures of environment, or history would be a dull business; but few kings have been more unfortunate in their environment than Richard. Stubbs' verdict was probably just, if we allow Richard more wisdom and less wantonness in his policy than Stubbs did, and if we concede that the problem which confronted both Richard and his opponents was more complicated and difficult than even Stubbs supposed.

Richard's opponents also shared the extravagance of the period. They were capable of judicial murders and can be accused of selfishness and instability. But they were much more than puzzled and short-sighted. Like Richard, they stood for great principles even if they did not always understand them. They were confronted by problems which would have taxed the statesmen of any generation; and even if their methods were both extreme and questionable, their cause was the cause of liberty. It was actually they who did as much perhaps as any other generation since Magna Carta to preserve the political traditions of England. They were the men of destiny, who stood at the political crossroads. It was fortunate for England, and, indeed, for Europe, that they builded even better than they knew.

Richard's personal rule, beginning soon after 1381,¹¹¹ was the time of decision for all the great constitutional problems of the fourteenth century, posed in the reign of the second Edward, postponed for fifty years by the statesmanship or negligence of Edward III. The new ruler could not hope at first to use foreign policy to obtain an evasion of decisions in internal affairs. In France, the tide had turned against England, but the nation was unwilling to cut its losses. The situation abroad created

¹¹¹ The question is briefly discussed in Chapter VII below.

domestic discord, not harmony. The way of Flanders was matched against the way of Spain, as an avenue into France. There were accusations of treachery and clear signs of incompetence, as in the Crusade of the Bishop of Norwich in 1383. Peace, not war, was now necessary for a solution of the foreign as well as of the domestic problem; but peace was only to be obtained by what were generally considered to be shameful concessions; and the pride of the magnates was deeply involved in a continuation of the struggle. Richard suffered from all the disadvantages, and none of the advantages, of his grandfather's policy. Moreover, he was no soldier like his father; though the importance of this can be exaggerated. Even the Black Prince could not have turned the tide of victory. Richard's policy of intermittent truces and friendship with France was probably the best thing for the country; but it provided no basis for uniting the nation in harmony under the throne.

English minds turned inwards on their own problems and troubles. The country was seething with unrest and excitement. Disbanded soldiers, livery and maintenance, new methods of taxation like the Poll taxes of 1377 and 1378, aristocratic rivalries and ambitions, all added to the burden of an unsuccessful war. The established political, as well as the religious, order was wide open to attack. As Wyclif threatened the hierarchy of the church, so others in 1381 threatened the hierarchy of the state. The leaders of the Peasants' Revolt aspired to economic reforms; but they also hoped to improve politics by cutting off the heads of the king's ministers.¹¹² There was no problem, of politics, religion or economics, that was not busily debated in countless gatherings, and in which there were not noisy protagonists of change. The great question now was not whether, but how, the constitutional issues already raised should be answered. On this answer would depend the future structure of the state.

¹¹² See my article, "The Peasants' Revolt of 1381," in *Speculum*, XV (Jan. 1940), 12-35.

The Minority and the French War, whilst they contributed towards a later crisis, at first obscured the issue. Public sentiment was in favour of Richard, the hero of 1381 and the Londoners' king. John of Gaunt, with his massive power, was ambiguous in his actions. The pressure from France tended at first to unite the nation. Richard himself was unknown and untried. It was not until he had gathered together a court party in 1383 and 1384, until the French and Scottish wars bogged down in stalemate and stagnation, and until John of Gaunt had gone on his Spanish expedition in 1386, that the conditions were ripe for a trial of strength on the deep constitutional issues which had been brought to the forefront of politics by the parliament of 1376.

Thus the first great political crisis of Richard II's reign did not begin until 1386. In it, the common object of both parties was probably to decide whether the gains made by the nation in 1376 and 1377-82 should be consolidated, or whether Richard should be allowed to resume all the prerogatives of Edward III.¹¹³ The king precipitated the crisis by claiming to control and promote his own servants. He created his close friend Robert de Vere Marquis of Dublin. He may have planned for Robert a power in Ireland which would make him a rival of the Duke of Lancaster.¹¹⁴ How far he was deliberately consolidating his position and repairing royal fences, we have no means of knowing. The odds are that he had such designs, not unperceived by his subjects, and that this was the underlying cause of the crisis of 1386.¹¹⁵

¹¹³ Behind this again there was no doubt a very serious question of how Richard would use these powers if he were allowed to regain them.

¹¹⁴ T. F. Tout, *Chapters*, III, 397, 407, 408.

¹¹⁵ It should be made clear, however, that the opposition to Richard in 1386 was not clearly a continuation of the opposition to John of Gaunt. The bishops, notably Archbishop Courtenay and bishops Arundel of Ely and Wykeham of Winchester, were perhaps constant in their opposition. But there is no proof of continuity in the policy of the lay nobles. Edmund Earl of March was inactive and Henry of Derby, son of John of Gaunt, now supported, instead of opposing the party of reform. The personal motives which animated the opposition magnates are obscure. Arundel is supposed to have been a "protagonist of the aristocratic party" (T. F. Tout, *Chapters*, III, 409). Thomas of Woodstock and Henry of Derby represented the "Lancastrian" tradition (*ibid.*). Thomas Beauchamp,

The reformers of 1386 began roughly where the reformers of 1376 had left off. They proposed, it is probable, to attack the king's ministers by the same judicial methods. Richard's tart reply to their demands¹¹⁶ was an assertion of opposition to their principles as well as to their immediate claims. There was a deadlock which was only resolved by the threat of deposition made by Arundel and Thomas of Woodstock, sent on a "parliamentary" deputation to the king. At the very outset of the new reforming movement, the extreme tensions and animosities of Edward II's reign had already been revived.

The reformers now began to develop some of the logical consequences of their actions. They claimed for parliament the name and attributes of the High Court of the Realm. They impeached Suffolk, adjudging him guilty despite lack of convincing evidence and in spite of the king's bitter opposition. A new committee of reform was given wider powers than the council of 1376. Thus Lords and Commons successfully reasserted the competence of the old assembly, and of the new court, of parliament. They boldly acted in the name of parliament, and perhaps began a new chapter in its history by taking the control over the assembly, for a time at least, out of the

Earl of Warwick, is supposed to have despaired of Richard (*ibid.*, 410). Thomas Mowbray, Earl of Nottingham, was, it is suggested, driven into opposition by Robert de Vere's jealousy of him as a possible rival (*ibid.*). Stubbs, in *C.H.*, II, 492, is a little less positive in seeing the affiliations of these magnates. A. Steel (*Richard II*, 94) has nothing additional to offer. There is some confusion by historians over the use of both "aristocratic party" and "Lancastrian tradition" in discussing this period. Whether or not there was any significant continuity between the Appellants and the baronial opposition to Edward II it seems impossible to say. Perhaps one important factor making for some connection is the influence of the territorial possessions of the magnates. Great lords were in some sense the representatives and leaders of the gentry in the regions where they had estates. Thus John of Gaunt probably reflected something of the same regional feelings as Thomas of Lancaster. Thomas of Woodstock inherited Marcher lands through his marriage to a Bohun heiress. Thomas Mowbray inherited lands from the Mowbrays, the Braoses, the Segraves, and the Bigods, so that he represented many regions. Richard Fitzalan, Earl of Arundel, was closely connected with the March as was Thomas Beauchamp, Earl of Warwick. Thus there was a revival of the old Marcher-Lancastrian opposition of the period 1308-21, with some support from the North, the support which Thomas had failed to get in 1321. It should be noticed that Henry of Derby in 1386 virtually reversed the policy his father had followed ten years before. He reverted to the older traditions of his house.

¹¹⁶ See Chapter VII below.

hands of the king. The parliament of 1386 dramatically showed what the passage of time had done to the greatest institution of the state, which in 1322 had been claimed by the monarch as his instrument, subject to his initiative. However these achievements appeared to the reformers, they must have seemed to the king's supporters like a direct and inescapable challenge to the royal power.

It is no wonder that Richard declared, at the end of the parliament, that he did not intend by the concessions he made to surrender his prerogatives. His subsequent appeal to the judges¹¹⁷ and to the country, in 1387, has been severely condemned; but it seems to have been a logical response to the new problem with which he was confronted. The great institution of parliament itself had, temporarily at least, been turned against him. Lords and Commons had combined to wrest its powers from him and use them to intimidate their monarch. It may well have seemed that the only recourse he had was to appeal over the heads of Lords and Commons to the nation and the law. He had to build up a new support for the Crown or resign himself to a humiliating and possibly irremediable defeat.

The judges not only completely supported Richard's interpretation of the constitution, but also declared the penalty of treason for those who had gone against it. The question put to them, and their answers, are a strong testimony to the strength of Richard's position, judged solely by the legal standard. They show how clearly Richard understood the implications of the recent proceedings, and how he feared for the reality of his power. If they were also a declaration of war against the opposition, this can hardly be surprising. Richard did not begin the political warfare of 1386. That had already been done by the Commons and the Lords. Richard's appeal to the judges may have been as extreme as the claims of the opposition; but the truth is that the whole clash between the king

¹¹⁷ See Chapter VII below, where some of the problems behind this narrative are discussed.

and his subjects was bitter and uncompromising. This was not simply because of Richard's ambition or the arrogance of the opposition; it was also because circumstances made it appear as if each, and not only one of them, was fighting for the preservation of its whole political heritage.

Richard's temper and outlook may have seemed to threaten the hard-won liberties of the nation; the claims of the magnates may have seemed to threaten the very basis of the royal power. Earlier reforming movements had been mainly limited by the transitory objectives of a reforming programme; this which confronted Richard was to be exercised largely through the permanent institutions of the state.¹¹⁸ It seems fair to argue that the conflicts of Richard II's reign were, to this extent at least, unprecedented. The elements of the constitution were, by this time, in such direct and unprecedented conflict that only the strong English traditions of unity and political moderation prevented them from flying apart.

The immediate reason why there was no Barons' War as a result of Richard's defiance was that he failed to get the support of any important section of the nation. The judges might support him, as they were bound to do by legal principle; but neither the lords nor the knights of the shire would fight for him. The logical reply of the magnates was a final and irrevocable application of their new theories, in the parliament of 1388.¹¹⁹

This time they were not content with the mere removal of Suffolk as in 1386; their object was the trial and execution of the king's chief advisers, including Robert de Vere and Michael de la Pole. This, it seems likely, was not a matter of justice but—according to their view—of political necessity. It is quite conceivable that the trial was intended not only to punish transgressions but also to assert beyond any question the supre-

¹¹⁸ This question is discussed in part in my *Studies*, Chapter X. It is also dealt with, incidentally, in Chapter I, and at some length in Chapters VII and VIII below. Perhaps students should suspend judgement on it until they have consulted these.

¹¹⁹ Some of the problems relating to this parliament are discussed below in Chapter IX.

macy of the High Court of Parliament. One intention of the opposition Lords, Gloucester, Arundel and Warwick, was possibly indicated at the outset of the proceedings, by their choice of their method of Appeal, with its implications of Common Law procedure and action in an established court. It was made clear when Richard tried to destroy the validity of Appeal by using the opinion of the judges inside parliament as formerly he had used it outside. The new procedure, the judges declared, at Richard's prompting, was not justified by either Civil or Common Law. In reply, the Lords in parliament swept aside this legal condemnation and produced a historic justification of their methods and procedure. They made the first formal declaration of the nature and attributes of the High Court of Parliament. The new court, they asserted, administered not the king's law, but the law of parliament. It followed its own procedure, defined not by the monarch but by the Lords. To this extent, it was independent of the authority, and immune from the influence, of the king. It tried high crimes that touched both the king and the realm. It needed only the assent, not the command, of the ruler.¹²⁰ This was, as Tout said, an assertion of the ultimate sovereignty of parliament; but it was a parliament which consisted, it must be noticed, of the King, the Lords and the Commons, not only of the Lords and the Commons. In practice, the sovereignty exercised in the parliament of 1388 may have been that of the Lords and Commons, conflicting with that of the ruler; but in theory the sovereignty which was proclaimed was that of the king in parliament. Nor is this distinction a mere technicality. Though the clash of sovereignties inherent in the actions of the Merciless Parliament threatened the destruction of political unity, the theory of "composite" sovereignty implicit in the High Court of Parliament offered a basis of conciliation and a promise of new unity. Though the promise was fugitive and elusive at the

¹²⁰ Though the implications of this fact should not be stressed too much until the use of the phrase has been more fully explored. It occurred in 1330, at the trial of Roger Mortimer.

moment, the theory was one day to become an essential part of the concept of the state.

Nevertheless, with the successful establishment of the High Court of Parliament, and the judicial murder of the king's friends and advisers, despite every resistance that Richard could offer,¹²¹ an issue was joined between the claims of the king and those of the Lords and Commons which seemed to admit of no compromise. The conflict of interest precipitated by the High Court quite concealed the promise of conciliation and unity which it contained. Elaborate pronouncements and ceremonies at the end of the parliament emphasized the extreme gravity of the events which had taken place.

The monarch had suffered reverses in this famous parliament more disastrous than anything since 1326. In some ways they were more disastrous than even the first deposition. Deposition, whilst it shook the institution of monarchy almost to its foundations, did not destroy any of its theoretical powers. The precedent of 1388, on the contrary, challenged the whole traditional supremacy of the king. Perhaps the nearest parallel was that of the innovations, more tentative and less practicable, which had been attempted in 1308. Until the clash of sovereignties which had emerged in 1388 was resolved one way or the other, or until a reconciliation was worked out in some new concept of sovereignty transcending that of either the king or the community, the bitter political struggle between Richard and his opponents could never be allayed.

VI

THE remaining events of Richard's unfortunate rule are all understandable in the light of this situation. Richard, in 1389, accepted the deeds of the Merciless Parliament; but he could

¹²¹ Despite the attempt of Robert de Vere to resist by force, defeated by the Appellants in the Campaign of Radcot Bridge; see J. N. L. Myres, "The Campaign of Radcot Bridge in December 1387," *E.H.R.*, XLII (Jan. 1927), 246-51.

not accept their implications. He surrendered his advisers, and conceded the new claims of the Lords and Commons; but he could not renounce the sovereignty inherent in his dignity as king. Against these new claims he fell back on his "regality," comprising all the undefinable resources of prerogative which resided in the supreme head of the state. This, at least, had not been taken from him, and could not be, without endangering the whole fabric of the constitution. It was still a most potent instrument in the hands of the ruler, as indeed was proved much later by the Tudor kings.

It is probable that the declaration on 3 May 1389, by which Richard resumed power after the interlude of the Merciless Parliament,¹²² was an important statement of policy. The king dissociated himself from earlier advisers; but he said that henceforth he would summon whomsoever he would to advise him, and would transact his own business himself.¹²³ In January 1390 he agreed to the resignation of ministers and councillors in parliament, so that complaints could be made against them;¹²⁴ but in 1389 he peremptorily overrode his chancellor Wykeham in the sealing of certain royal concessions;¹²⁵ and he declared in the parliament of 1390 that he wished to be free to remove and appoint officers at his

¹²² Richard's assumption of personal power has been regarded as a successful move against the Appellants; "the Appellants in short were cornered and had to give way"; A. Steel, *Richard II*, 177. Whilst this is true, it must be remembered that the Appellants had made no move to set up a permanent control over the king. They must, therefore, have expected a resumption by Richard of his personal command over the executive. They may not have expected it so early, and they may not have anticipated the terms of Richard's demand. These seem to have been just as important as in the case of Henry III's similar declarations in 1223 and 1227.

¹²³ His first act was to cause the chancellor to surrender the Great Seal. In letters close of 8 May, he took upon his own person the government of the realm, with the advice, assent and counsel of the magnates, to rule with the deliberation of his council, and promised that all graces and pardons of the Merciless Parliament should remain in force; *Foedera*, VII, 618-19; *Rot. Parl.*, III, 404; *C.C.R.* 1385-9, 671. There is no mention of the co-operation of the Commons; nor, indeed, did Richard even promise to rule with the advice of the Lords.

¹²⁴ *Rot. Parl.*, III, 258. Perhaps this was more than a "curious comedy"; T. F. Tout, *Charters*, III, 460. It is to be noticed that the complaints were to be made to the king himself.

¹²⁵ *Ibid.*, 459; Maxwell-Lyte, *The Great Seal* (H.M.S.O., London, 1926), 321.

pleasure.¹²⁶ Richard thus tacitly conceded the new judicial claims of parliament; but he insisted that his ministers were his own. They owed to parliament the duty of answering for the abuse of their office; but they owed their allegiance to the Crown. Parliament had its judicial attributes; but Richard had his "regality." Like Henry III, he could restore an effective royal power, after reverses, out of attributes which nobody could as yet venture to deny.¹²⁷ The more we know of the period 1388-99 the less likely are we to consider that Richard at any time made a complete surrender to his enemies, or that there was any radical difference between his intentions, though there was some in his actions, before and after 1393.

His resumption, in 1389, of personal control over the government was thus based on an acceptance of the acts of 1388; but it was also the beginning of yet another royalist restoration. The ruler was still engaged in the long, unceasing effort to preserve his ancient rights and apply them to the new fabric of the state. That the logical end was now absolutism, not feudal monarchy, was no deterrent to a monarch with the temperament and ambition of Richard. For his purpose, the first requisite was the building up of a royalist party, to take the place of that which had been destroyed in 1388. This the king proceeded to do after the return of John of Gaunt in October 1389. He had the support of the Lancasters. He was friendly to the Beauforts. He conciliated the Appellants, particularly Thomas Mowbray. He built up a strong party amongst

¹²⁶ Compare his act of 16 May, when he postponed the collection of part of the current subsidy, "of his own motion, without advice from anyone." He also insisted on the direct allegiance of the sheriffs to the king.

¹²⁷ Cf. the ordinances for the council on March 8, 1390; *Acts of the Privy Council*, ed. Sir H. Nicolas (Record Commission Pub. No. 16, 1834), 18a. All matters which required the "special grace and permission of the king" were to be explained to him and his opinion learned; though he could not make grants which diminished his income without the advice of the council and the assent of the Dukes of Guienne, York and Gloucester, and of the chancellor or at least of two of these. These ordinances may not have represented an innovation in council practice; see T. F. Tout, *Chapters*, III, 465-6; my *Studies*, 133. For the councillors' opposition to Richard's generosity to Nottingham in 1389, see Tout, *Chapters*, III, 469; *Acts of the Privy Council*, 12b-12d and especially the comments on p. xv. The conflict between loyalty to the king and fear of parliamentary criticism is discussed by Tout, *Chapters*, III, 470.

the bishops. He continued to seek, and this time he managed to get, support in the country. To obtain supporters, he used indenture and patronage. He secured the services of smaller landowners such as Bushy, Bagot and Green. He copied the methods of the "bastard" feudalism which was making his magnates strong in opposition;¹²⁸ he added to it the use of the still ample resources of the Crown.

The second requisite was a domestic and foreign policy which would attract the support of the nation. For this, he borrowed methods from his grandfather Edward. The Statute of Provisors in 1390, the extension of Mortmain in 1391, the Statute of Praemunire in 1393, are reminiscent of Edward III's legislation, inspired by a national opposition to some claims of the Bishop of Rome. A parallel to Edward's foreign policy was provided by Richard's Irish activities in 1394, 1395 and 1399.¹²⁹ Ireland was a stage where Richard could achieve something, at least, of his grandfather's glory and with it his grandfather's hold over the nation; it was also a place where he could build up, for his own strength and comfort, the instrument of war. His greatest departure from Edward's foreign policy was in relation to France. Instead of war with his French neighbour, he had to follow a more subtle and dangerous policy of peace.

In the third place, Richard provided for his restored monarchy a refurbished but not unconvincing theoretical basis. This was the idea of a return to the historic monarchy of England such as existed before all the troubles and conflicts of the century; in essence, a return to the personal monarchy of the golden past. Richard's theory, like Charles I's, or for that matter like the first Edward's, was that it was the ruler's duty to govern; there could not be two rulers in the state; and therefore the subjects must be content with their ancient

¹²⁸ So, of course, had all his predecessors since Edward I, but it is probable that Richard intensified the policy.

¹²⁹ T. F. Tout, *Chapters*, III, 488-95; E. Curtis, *Richard II in Ireland, 1394-5* (Oxford, 1927). These are the best accounts; but compare A. Steel, *Richard II*, 205-11, 260-3.

functions of counsel and consent. Thus there would be efficiency and harmony. Such a theory was likely to be attractive to many in this generation, which more than once trembled on the brink of civil war brought on by new and, as some may have thought, excessive demands by the Commons and the Lords. Whatever dangers lurked in this over-simplification of the problem of government, it cannot be denied that it had a good deal of history and precedent on its side. A number of people may have sympathized with Richard's theories who could not see the logical consequences of his acts.

Thus in 1390 he was able to obtain a petition from both Lords and Commons that the regality and prerogative of the king and of his crown be always preserved.¹³⁰ In 1391 the Commons petitioned that 'our lord the king shall be as free in his regality, liberty and royal dignity as any of his predecessors, despite any statute or ordinance to the contrary, notably those in the days of Edward II.'¹³¹ On 5 February 1397, Richard got the Lords in parliament to resolve that it was treason for anyone to incite the Commons in parliament to reform anything touching the person, government or "regality" of the ruler;¹³² and he got Thomas Haxey condemned (though not executed) for treason as the author of a bill complaining about the royal household.¹³³ It was contrary to his "regality," the king said, that his subjects should presume to govern or criticize his household. Just how Richard managed to get support for such actions and declarations is still something of a mystery. Whatever the explanation, they seem to show that between 1390 and 1397 Richard laid securely the foundation of a final restoration of the monarchy based on that regality which he claimed, with some justice, his ancestors had always possessed.

The weakness of his position was that there could not be a

¹³⁰ *C.H.*, II, 510; *Rot. Parl.*, III, 279. The petition came from Lords and Commons; but the impulse in all probability came from the king. It is a remarkable testimony to the success which attended Richard's efforts to raise a following and obtain support for his theory of monarchy.

¹³¹ *Rot. Parl.*, III, 286. Afterwards, all the prelates and temporal lords petitioned likewise.

¹³² *Ibid.*, 408.

¹³³ *Ibid.*, 339, 341.

return to the historic monarchy. The picture he presented was purely idyllic. He could not go back to Edward I's reign. He could not balance the constitution on a precarious equilibrium between the claims of the Merciless Parliament and the declarations of 1389-97. He could not re-enact the compromise of 1330. The restraints imposed on the ruler since 1376 were incompatible with the ancient pattern of government. Neither Richard nor his opponents could as yet provide a clear alternative to this pattern which would satisfy the whole nation. Richard's solution was, in effect, a destruction of all the political ambitions and ideals of his opponents. It was not even a return to the political balance of past generations. It was, in the last analysis, the same destruction of that balance which Charles I later attempted, by recourse to the prerogative powers of the king.

The result was a mounting tension in the country, the product, we may guess, of this fundamental clash of political aims. In 1393, Richard was suspected of plotting the destruction of the magnates.¹³⁴ His moderate supporter, John of Gaunt, was suspected of scheming for the succession for his son.¹³⁵ Some magnates thought that John was too friendly with Richard; whilst in 1393 Sir Thomas Talbot, on the contrary, rose in Cheshire to save the king from his uncles. In January 1396 Richard gave instructions to his envoys to France to get a promise of French support "against any of his own subjects."¹³⁶ Meanwhile, with both consistency and logic, he made every preparation for the crisis which he knew was certain to arise. He bound to himself the magnates who would later be the "royal" Appellants.¹³⁷ He appointed courtier

¹³⁴ T. F. Tout, *Chapters*, III, 484; *Foedera*, VII, 746.

¹³⁵ *Eulogium Historiarum*, ed. F. S. Haydon (R.S., 1863), III, 369. John had to protest, in 1394, that he was not plotting treason; Galbraith, *New Life of Richard II*, 231-2. In the same year, perhaps another sign of tension, Richard struck Arundel for discourtesies at Anne of Bohemia's funeral so violently that he drew blood.

¹³⁶ *Foedera*, VII, 811. Cf. T. F. Tout, *Chapters*, IV, 2, n. 4. The Peace of Calais in 1396 and Richard's marriage to Isabella the child-bride, daughter of Charles VI of France, brought Richard and France close together at this time.

¹³⁷ They "represented the new aristocracy, closely related to the throne"; T. F. Tout, *Chapters*, IV, 22-3. Of the eight new Appellants in 1397, Nottingham (Thomas Mowbray) and Somerset (Henry, son of John of Gaunt) were renegade

bishops. He recruited archers, used to overawe the parliament of June 1397. He established sufficient influence in the counties to exercise pressure on the election of knights of the shire.¹³⁸ Circumstances, and possibly his own inclination, had made absolutism the logical goal of his policy, and by 1397 the groundwork may have seemed to be completed for the last, decisive measures to be taken to this end.

In July 1397, Richard suddenly attacked Gloucester, Arundel and Warwick, after inviting them to a banquet, and had them appealed of treason in parliament, exactly as they had appealed his own servants in 1388. Arundel was executed, Gloucester probably murdered, and Warwick and the Archbishop exiled. Richard is said to have been informed by the Earl of Nottingham that the three earls had formed a conspiracy against him.¹³⁹ In any case, the destruction of the Appellants was inevitable, if Richard was to undo the consequences of 1388. The events of July 1397 are best regarded, perhaps, as the first step in Richard's final plan to assume absolute power on the basis of his prerogative. This was no sudden innovation. It was the logical outcome of the whole course of the political struggle since at least 1386.

The first step in this plan was thus the destruction of the Appellants; the second step was the destruction of the baronial

Appellants of 1388, bound by personal favours and by the influence of John of Gaunt. Rutland was the son of Edmund of Langley (Duke of York), fifth son of Edward III. John Holland, Earl of Huntingdon, was Richard's half-brother; and the Earl of Kent (Thomas Holland the Younger) was Richard's nephew. Thomas Despenser represented the Despenser family which had given formidable support to Edward II. William Scrope was son of Richard Scrope of Bolton, who was brother-in-law of Michael de la Pole. The eighth was the young John Montague II, Earl of Salisbury. John, in particular, takes us back to the young nobles who had surrounded and supported Edward III in 1330.

¹³⁸ T. F. Tout, *Chapters*, IV, 23. Cf. A. Steel, *Richard II*, 223. The assertion in the *Annales Ricardi in Chronica Monasterii S. Albani*, III, ed. H. T. Riley (R.S., 1866), 209, seems to justify the above statement, in spite of uncertainties on the point. It was that knights of the shire "were not elected (to the parliament of June 1397) by the community, as custom demanded, but by the royal wish." But Mr. H. G. Richardson can find no evidence of packing, and the whole question must be regarded as still subject to discussion; see Mr. Richardson's article, "John of Gaunt and the Parliamentary Representation of Lancashire," *B.J.R.L.*, XXII (April 1938), 175-222.

¹³⁹ The question is discussed most fully in A. Steel, *Richard II*, 231.

instrument of Appeal. This was done by adapting Appeal to the purpose of the Crown; Appeal was shown to be a double-edged weapon as dangerous to the subject as to the king. It was also done by annulling the Impeachments and Appeals of both 1386 and 1388, at Westminster and Shrewsbury. Finally, the judges were persuaded to declare that, had they been consulted, they would have condemned Impeachment as unconstitutional, in the same manner as their predecessors of 1387. Thus recourse to the High Court of Parliament was secured for the monarch and in effect denied to the subject. One of the greatest of all the restrictions on Richard's regality was removed.

The third, and in some ways most important, step was to bring parliament itself back to something like the rôle it had played under the first Edward. Some such move was, indeed, inescapable. Even apart from the questions of Impeachment and Appeal, parliament was, along with the council, the key institution of the realm. So long as it retained its pretensions of 1388 the king's power, based on his regality, could be enlarged and consolidated but was always liable to be overthrown. Yet the times were long since past when it was possible to bring parliament suddenly into complete subordination to the ruler, in spite of Richard's high talk in 1397 about the duty of obedience owed by the subject to the king. The only logical alternative, as Richard seems to have understood very clearly, was for the monarch to dispense, as far as possible, with its actual assembly. Thus Richard's actions, in the parliament of September 1397 and January 1398, were intended primarily to make the king independent of the co-operation of parliament, and hence free from the danger of parliamentary opposition. In the first place, he was granted lavish subsidies with the unprecedented addition of the customs on wool and leather for life. This tended to make him financially independent. In the second place, two oaths, to maintain the judgements and acts of the parliament together with the "regality," bound the members, Lords and Commons, as closely as oaths could bind them, to the king. In the third place, a committee of eighteen persons

was set up on the last day of the Shrewsbury parliament to deal with all outstanding petitions with full parliamentary authority.¹⁴⁰ Its powers were subsequently considerably enlarged. They were made so indefinite that the committee could exercise far-reaching functions in the name of the whole assembly of parliament. At least on the side of jurisdiction, now so important, the parliamentary committee of 1398 seems to have done for Richard what the customs and subsidies did for him in the matter of finance. Its appointment should possibly still be regarded as a final testimony to the importance of the parliamentary assembly in all Richard's plans and actions at this period;¹⁴¹ a testimony, indeed, to the dominant position of parliament in the political structure of the age.

Stubbs' strong views on the effects of these enactments seem to be fully justified. By them, Richard achieved for a time the complete destruction of parliament as an effective instrument of opposition. He removed the restraints on his "regality" in the one great institution which above all others determined the pattern of the state. Other institutions, like the council, were amenable to much less drastic methods. The door to absolutism was wide open; and whether or not he wished to, Richard was compelled to enter, for only in complete absolutism was there now any security, for himself or for his throne.

To end his work, Richard brought about the banishment of the last two Lords Appellant, Hereford and Norfolk, the former for ten years, the latter for life.¹⁴² He went back to the pre-

¹⁴⁰ This difficult question is discussed in detail in Chapter IX below.

¹⁴¹ Some reasons for this conclusion are advanced in Chapter IX below, including a discussion of the important views of J. G. Edwards on this committee.

¹⁴² A. Steel (p. 252) says that Richard's first impulse was to reconcile the disputes, not, as is commonly held, to aggravate the quarrel. (See *Traison et Mort*, ed. B. Williams, Eng. Hist. Soc., London, 1846, 14, 145-6.) He only "reluctantly" accepted the view that there was something behind the mutual accusations. T. F. Tout does not say this, but believes that "the king had already gained his chief points and was anxious to avoid fresh trouble" (*Chapters*, IV, 31), and so had the parliamentary committee of 1398 appointed. But it was apparently, as Tout observes, at Richard's request that Hereford told to parliament the story of his conversation with Norfolk. It was Richard who made a public and major issue of an obscure conversation between the last two Appellants.

cedents of Henry III and Edward I and got Papal confirmation for his acts. He had done what no other English ruler had ever done before him. He had turned the ancient theory of monarchy almost inside out by stressing only its power and not its obligations.¹⁴³ He had transformed the theories of government by consent into the practices of absolute rule.

When Richard thus began to "play the tyrant"¹⁴⁴ he had to assume the well-known trappings of absolutism. These were not so much causes as consequences. They may have been signs of an unbalanced mentality; but they have always been the product of absolute rule. He levied forced gifts and loans. He raised a "fellowship" of retainers, with the badge of the White Hart, to be his standing bodyguard. He extracted special oaths of loyalty.¹⁴⁵ He may have deliberately made use of courts which did not administer Common Law. He manipulated the pardon of Shrewsbury so as to overawe his enemies. He influenced the election of sheriffs and imposed on them new oaths to obey his commands, whether under great or privy or signet seal. He insisted on semi-Oriental etiquette in his court. There was nothing strikingly original and nothing very remarkable about all this deadly serious playing at tyranny. It was a direct consequence of the parliament of 1397-8, just as that parliament itself was the product of its predecessors in 1386 and 1388.

Thus Richard's restoration of the monarchy was logical and impressive; but it was not likely to be more successful, in the long run, than that of Edward II. If the English nation had to choose between excessive "parliamentarianism" and excessive "royalism" there was little doubt, by the end of the fourteenth century, which it would ultimately choose. However much the issue was obscured by personalities and cross-currents of intrigue and misunderstandings, it involved the retention or loss of political liberty; and political liberty was the life blood of the people. If the liberty offered by the magnates in 1388 had

¹⁴³ See my *Studies*, 250, 251.

¹⁴⁴ *Annales Ricardi*, 199-200.

¹⁴⁵ These may have owed something to the Appellants themselves; A. Steel, *Richard II*, 256-7.

threatened the effectiveness of government, the effective government offered by Richard II in 1397-9 destroyed political liberty. Between the two alternatives the nation seemed to be caught on the horns of a dilemma. Yet, in fact, its vitality and the strength of its political tradition were far too strong for either extreme to triumph, as they had been too strong in 1259 and 1322. In the end, the English people were likely to reject both extremes in favour of a compromise like that of 1330, which would satisfy the reasonable claims of both the monarch and the opposition. They were likely to cleave to the middle way which had inspired the great achievements of Edward III, and had kept the country, for a great century of constitutional evolution, free from the tragedy of civil war.

The opportunity came with Richard's Irish expedition of May 1399 and the disinheritance, in March of the same year, of Henry of Bolingbroke. The expedition was, amongst other things, one more effort to strengthen the "regality"; but though it was a "calculated risk," it failed in its intentions. It removed Richard from England, and offered a unique opportunity to end his tyranny without the bloody arbitrament of civil war. His confiscation of Henry's possessions was perhaps intended to be the final destruction of the great Lancastrian opposition; but it gave the magnates and people a cause which was as legitimistic and traditionalistic as Richard's own.¹⁴⁶ Henry began his revolution by demanding only his father's possessions; but the country probably turned towards him, not only because of the justice of this limited objective, but also because he seemed to offer a safe, conservative basis on which the whole policy of Richard could be opposed.

It is true that this purpose, if it existed, was partly frustrated. Whether he was driven on by his own ambitions or succumbed

¹⁴⁶ A. Steel, *Richard II*, 248-50, believes that it was because of the extreme seriousness of this decision that Richard "resurrected" the parliamentary committee of 1398 and added to its powers. Its first act, thus revived, was to revoke Richard's letters patent to Henry of Bolingbroke authorizing him to appoint attorneys who could receive any inheritance which might fall to him in his exile.

to the pressure of circumstances, Henry of Bolingbroke departed from his original intentions.¹⁴⁷ He deposed and murdered Richard and grasped the Crown for himself. He claimed the throne by descent and by the grace of God, not specifically by parliamentary election. But he put forward his claim before the estates and people. Election or acclamation was to be the third element, indeed perhaps the most important element, in his right to be king. His victory had been achieved not only by himself but also by the nation. If he was not a "parliamentary" monarch, he was monarch by grace of God and of the parliamentary "estates." If his accession was a triumph for anything, it was a triumph not for the monarchy or for the opposition, but for the nation. It meant that what the nation wanted would, in the main, be achieved. And what the nation wanted was neither the absolutism of Richard nor the radicalism of the Appellants. It was that limited monarchy whose essence Edward III had proclaimed.

This was, indeed, merely an echo of the old feudal monarchy. But it was the old monarchy in a new and significant dressing, on the threshold of giving place to the sovereignty of king in parliament of the modern age. Henry IV proclaimed this new sovereignty almost in so many words in 1399. With its beginnings, the most dangerous political struggles of the later Middle Ages were over. Though the Yorkists and Lancastrians were to ignore its possibilities and the Stuarts were to reject its consequences, the men of the fourteenth century had nevertheless, by their struggles and efforts, stumbled on a formula of government which would reconcile their differences and unite their interests and lead them successfully down long centuries of political advance.

¹⁴⁷ In the last analysis, it may be argued, he had no alternative but to depose Richard. If he had not done so, it was certain that, sooner or later, the king would exact a bloody vengeance for his humiliation at Conway and Chester.

VII

Thus the fourteenth century proved, in the end, to be as creative in politics as the thirteenth. The magnitude of its achievement can only be measured by the magnitude of the dangers and difficulties that had to be faced. This century witnessed in full measure what had only been beginning in the thirteenth, the challenge to medieval ideas and institutions arising out of the growth of the early modern state. The rise of the national order encouraged bitter political struggles. There was a danger of extreme solutions to political problems, involving either absolutism or chaos, which would have destroyed the medieval order. The reconciliation of the claims of monarch and people within the new framework of government at times seemed to be almost impossible. The attempts of reformers to safeguard the contribution of the community to the government often seemed to threaten the reality of monarchical rule. The attempts of the royalists to preserve what they valued in the old order often seemed to point straight towards absolutism. Though both sides had a valuable contribution to make to the constitution, the views of either side, pushed to excess, would at times have led to the destruction, not the preservation, of the medieval tradition.

Fortunately, what sustained the political structure of England was still stronger than what assailed it. Beneath the extremism on both sides, often bred in the heat of political struggle, there was still an acceptance of the same common political tradition by which the progress of the thirteenth century had been achieved. Indeed, the fourteenth century should probably be regarded, more than it has been, as a continuation of the thirteenth. The link between Thomas of Lancaster and Simon de Montfort is not readily apparent. Yet contemporaries did not entirely ignore it. Both represented a claim by the magnates for a greater share in the government; both, it seems possible, contributed to the growth of the Com-

munity of England; and both were crushed, in the end, by the formidable resources of the Crown. We may, it can be argued, go even further. The ideals of neither statesman died with him; each made an enduring contribution to English political life.

The aims of the opposition to Edward II were, in the nature of things, more complicated and probably more ambiguous than those of Simon de Montfort or even those of Bohun and Bigod. They included, and perhaps had to include, a more resolute and far-reaching attack on the venerable concept of personal monarchy; and they contained the germs of an attitude towards parliament which had been quite beyond the reach of the magnates in the earlier period, when the assembly was little more than a *tractatus* and the occasion of a court. It takes, as yet, a considerable act of faith to see traces of a broad and, for the most part, consistent policy of opposition in the Declaration of 1308, the Ordinances of 1311, and the great trials of 1308 and 1321. Nor is the link between this policy and the future opposition of John Stratford and the Appellants very clear. Yet the more the great political crises of this period are studied, the stronger is the suggestion of a deep continuity; of a great and strong current of political evolution which gathered into itself all the vivid experiences of a creative and fortunate community and carried them forward into the achievements of the modern English state.

To this common heritage, the kings and royalist statesmen, as well as the opposition, made their contribution; they too looked back to their great predecessors and held fast, in their own way, to the great legacy of the past. Edward I cast his long shadow (or illumination) down all the length of the fourteenth century. Richard II was to learn something from the struggles of Edward II's reign as well as from the obstinate defence of his prerogatives by Henry III. It may be, though the time may not yet have arrived, that future historians will not look on the reign of the second Edward as a period cut off by its peculiar preoccupations and personalities from both the past

and the future; they will regard it as being, in its own manner, a great formative period, when the political struggles of the thirteenth century began to be refashioned under the pressure of changing conditions, above all by the rise of the national state.

In some respects the struggles of Edward II's reign set the pattern, though as yet an indistinct and somewhat confused pattern, for the struggles of the century; but the reign also provided the keynote of the century in another way. Even more important than the conflicts, in their final contribution, were the persistent efforts at compromise and conciliation shown in the Middle Party and triumphing, in the end, in the great political compromise of 1327-30. This moderate settlement has been regarded above as one of the greatest achievements of the age. It was this compromise, together with those of 1341-3 and 1399, which really enabled the fourteenth century to make an almost unique contribution to English political development. All three were great expressions of the underlying unity of the nation and the strength of its political life. They contrast with the failures of the fifteenth century and call to mind the great compromise of 1266-72. They have been, and will be, given great and possibly exaggerated importance in this study; at least it seems possible to claim that without that of 1327-30 the great creative years of Edward III's reign cannot be properly understood.

The settlement of 1327-30 has been regarded above as the real key to Edward III's reign. It was a typically English settlement. It avoided general principles, circumvented insuperable obstacles, and concentrated on practicalities. It depended for its success on mutual concessions; but it managed to preserve what was best in both the royalist and baronial ambitions and ideas. It conceded a new partnership in government to the community without rejecting the concept of personal monarchy. It accepted the importance of the Lords and Commons in parliament without destroying the parliamentary supremacy of the king. If it could not reconcile the conflicting elements in the constitution, at least it brought

them closer together. These features of the settlement, discussed further below, are worth enumerating here because they are so typical of an outlook in the fourteenth century that has perhaps not received the attention it deserves.

The new order of Edward III, based on this foundation, was as English as the settlement. It was one long compromise and, in a sense, one long evasion of the political problem. Yet it was at the same time perhaps the only answer to it. Deep beneath the surface, the question at issue in England was a struggle for sovereignty between the ruler and the subject and this never has been, and perhaps never will be, capable of a solution. Certainly the pragmatic answer ultimately evolved in England of the sovereignty of king in parliament was not within the bounds of practical politics at the accession of Edward III. His practical co-operation with his subjects, first with the Lords and later with the Lords and Commons, was probably an indispensable prelude, without which the remarkable accomplishment of a "composite" sovereignty might never have been achieved. This last, it should perhaps be added, looks natural and almost unavoidable to us, armed with the hindsight of history, but it was, in fact, almost a political miracle. It was achieved in the teeth of, not because of, traditions like that of personal monarchy; yet without it, it seems likely, a stable solution to the problem of sovereignty in the national state would never have been attained.

The new order of Edward depended, it has been suggested above, on foreign policy almost as much as on domestic conciliation. It nearly foundered amongst the stresses and strains of the Hundred Years War. The influence of this war on English history is still, despite much research, a very obscure question; but there can be little doubt that it was one of the major factors behind the political crises of 1341 and 1371, as well as behind the long domestic harmony. War and nationalism, as in the days of Edward I, went hand in hand. With the warrior king who triumphed at Crécy, the English monarchy took the decisive steps in that remarkable metamorphosis from the feudal ruler who still occupied the throne in Edward I's

reign to the Tudor despots who had absorbed to themselves all the loyalties in the state in the age of Henry VIII. That Edward began this transformation as the leader not the master of the English nation makes him, whether he deserved it or not,¹⁴⁸ one of the great rulers of England. It does not seem too extravagant to suggest that, in its own way, his reign was as much a turning-point as that of the first Edward, and that a great deal of the constitutional development of early modern England may one day find its earliest definable origin under his rule.

The failure of the "Edwardian" system in 1376, it may be suggested, was not due to its inherent deficiencies but rather to its success in achieving its purpose. It was the very prosperity and security which it achieved, the success of the political co-operation of Lords and Commons with the monarch, and the growth of the unity of England, which made for a growing clamour for constitutional change. It could be said that the new order set up in 1330 had become strong enough to burst asunder the fragile shell of pragmatic action by which it was contained. Nearly fifty years is a long period in which to restrict in any one pattern a virile polity like that of medieval England. For better or worse, new terms of co-operation between monarch and people had to be devised. Something of what Edward II had denied and Edward III had evaded would now, it was probable, have to be conceded; or the ruler of England would have to turn his back on many good precedents and principles, take a leaf from the book of almost any of his European colleagues, and set his face directly towards absolute rule. It fell to Richard II, not Edward III, to make this great decision. He did not make it immediately, but the odds are that he did make it, and quite consciously, after his bitter experience of 1386 and 1388.

Thus the reign of Richard II has been regarded above as a great and, in some sense, a final age of decision, not only for its own problems, but also for problems which, growing in urgency

¹⁴⁸ The answer to this lies to a considerable extent in the crisis of 1340-1, discussed below in Chapter V.

and decisiveness, had obscure origins at least as early as the reign of Edward II. There are some grounds for believing that the clash between the sovereignty of the king and of the people, almost inconceivable in the thirteenth century and almost imperceptible even in the radical days of Edward II's coronation, had now taken shape and precision, so that it was understandable, even if only dimly and uncertainly, to contemporaries. To us, armed with the knowledge of history, it seems reasonably clear. It gives content and significance, revolving around the mature and integrated institution of parliament, to the great and, in the end, tragic struggles of this reign. There has been, and will be, discerned a clear pattern of action and reaction, running from Richard's accession to his final defeat; though this has entailed judgements about the understanding and intentions of Richard and of his opponents which may not find general acceptance, and must be scrutinized by the student on every occasion where they are encountered in the chapters below.

The final defeat of Richard by the magnates was in a very real sense inevitable. This is not to see determinism in history, but to make a fair calculation of the chances for and against him in his last effort to establish absolute rule. His triumph would have been too great a reversal of a current which had been gathering momentum for three-quarters of a century. Nor is this conclusion intended to suggest that Richard's cause was hopeless at that time or had nothing to contribute to the future. On the contrary, it was a gallant and at times a hopeful effort; and it achieved at least one important purpose, that of bringing England to reject the extreme ideas of the Appellants and the possibility of an aristocratic rule which would have been just as dangerous to the future development of the constitution as absolute royal power. This rejection did not avert the later tragedy of the Wars of the Roses; but it did preserve the monarchy which was to rise out of the confusion of that fifteenth-century struggle and give England Tudor rule. Richard II's defence of the monarchy was as unsuccessful but as fruitful in its consequences as Charles I's was. Each left a

legacy in the English constitution which has continued to make its contribution to the present day.

Yet despite the contribution of royalists and Appellants under Richard, the greatest achievement which was accomplished as a consequence of their actions was the great compromise of 1399, by which the conflicting aims of king and barons and the clashing sovereignties of monarch and people were reconciled in what can be called, without a great deal of exaggeration, a new concept of sovereignty, shared and not disputed, between the ruler and the *universitas*.¹⁴⁹ This was no isolated event; it was, on the contrary, a development which probably had its roots in the Declaration of 1308 and the Lancastrian concept of parliament. It expressed the true, inward spirit of the fourteenth century more than any of the more famous struggles which preceded it. It was the last, and perhaps decisive, expression of that unity which was the deepest characteristic of medieval England; that readiness to avoid, if possible, the political excess which impaired the transmission of the great medieval political tradition in many European states. It finally turned the face of England to what Stubbs rejoiced to call "parliamentary monarchy." Nor, as usual, was Stubbs far wrong in his estimate of the great experiment in government which it inaugurated. For good or ill, it was to take England through the limited monarchy of the early modern period into the democracy of the present day. Thus the end of Richard II's reign, like that of Edward II, witnessed a great and successful effort at political reconstruction. The success which attended it, and its subsequent failure in the Wars of the Roses, also indissolubly connected with it by the unbroken stream of history, will be the subject of a later volume of this work.

¹⁴⁹ Some of the necessary qualifications of this statement are suggested in the article "The 'Political Revolution' of the Thirteenth and Fourteenth Centuries," in *Speculum*, XXIV, 502-10.

Chapter I

THE CORONATION OF EDWARD II

(a) *Some Recent Works*¹

DAVIES, J. C. *The Baronial Opposition to Edward II, its Character and Policy* (Cambridge, 1918).

LAPSLEY, G. "Some Recent Advances in English Constitutional History (before 1485)," in *Cambridge Historical Journal*, V (1936), 119-61.

RICHARDSON, H. G. "The English Coronation Oath," in *Trans. Royal Hist. Soc.* (4th series), XIII, 129-58.

"The *Annales Paulini*," in *Speculum*, XXIII (October 1948), 630-40.

"The English Coronation Oath," in *ibid.*, XXIV (January 1949), 44-76.

SCHRAMM, P. E. *A History of the English Coronation*, trans. by L. G. Wickham Legg (Oxford, 1937).

STRAYER, J. R. "Statute of York and Community of the Realm," in *Amer. Hist. Rev.*, XLVII (October, 1941), 1-23.

TOUT, T. F. *Place of Edward II in English History*. Second edition, ed. H. Johnstone (Manchester, 1937).

Chapters in Medieval Administrative History, II (Manchester, 1920).

WILKINSON, B. *Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries* (Manchester, 1937), Chapter IX.

"The Coronation Oath of Edward II," in *Essays in Honour of James Tait*, ed. J. C. Edwards, V. H. Galbraith and E. F. Jacob (Manchester, 1933), 405-16.

"The Coronation Oath of Edward II and the Statute of York," in *Speculum*, XIX (October 1944), 445-69.

"Tendencies in Fourteenth Century Constitutional Development," in the *Report of the Annual Meeting of the Canadian Historical Association*, 1946, 18-29.

¹ The invaluable *Chapters* of Professor T. F. Tout is useful for every major problem of the fourteenth century; but it will not be cited again below unless there is some special reason. Similarly, Gaillard Lapsley's "Recent Advances" and my own *Studies* will not again be cited.

(b) *Introduction to the Documents*

THERE are five documents in this chapter, relevant to Edward II's coronation. The first gives a brief extract from the Order of the Coronation which gives the magnates a very remarkable duty on the morning of the coronation, possibly an innovation in 1308. The second document is the central and essential record, being the oath taken by Edward II himself, the source of much discussion in recent years. In an attempt to understand the significance of this oath, the first to show a major change in its wording since the time of Anglo-Saxon kings, the extract from the *Annals of St. Paul's* (Doc. III) is the most important document. It describes events at the time of the coronation. The fourth document, a passage from the valuable chronicle of Walter of Hemmingburg, already used in the previous volume, goes far to corroborate the evidence of the *Annals of St. Paul's*. Document V is the very remarkable Declaration of the magnates, made shortly after the coronation. Along with the Coronation Oath itself, it suggests that some developments which might almost be called revolutionary occurred in this fateful year of 1308.

This is, in fact, the view which has tentatively been adopted in the Introduction. It is at present in process of discussion, and must therefore be dealt with at very considerable length. The main basis for the view, as is already apparent, is the fourth coronation promise made by Edward: "Sire, do you grant to be held and observed the just laws and customs that the commonalty of your realm shall have determined, and will you, so far as in you lies, defend and strengthen them to the honour of God?" It is now generally agreed that this was an addition to the traditional threefold oath of English rulers. Earlier kings had probably made promises at their coronation additional to the oath: but this was the first time such a promise had been incorporated into the oath itself. That contemporaries attached some importance to it may possibly be shown by the way it, and the Coronation Order which contained it, were widely copied and recorded. The problem is: what exactly did the king

undertake when he promised to grant the just laws and customs the commonalty should have determined? One view is that this was a grave concession by the ruler, the product of baronial pressure until the very eve of the coronation; another, opposing view is that the promise had no great constitutional significance. The former is that the words bound the king to accept whatever just laws his subjects proposed to him after the coronation; the latter is that they merely prevented the ruler from repudiating the just laws which had been promulgated in the past. One view would make the king's coronation promise the real start of the great reforming movement of Edward's reign, the best-known expression of which were the Ordinances of 1311. The other view would make the reforming movement turn on quite another principle, expressed particularly in the Declaration of 1308.

This latter view, formidable and strongly argued by Mr. H. G. Richardson, who has contributed so much to our knowledge of coronations,² should perhaps be expanded. According to it, there is nothing in the records or chronicles to support the contention that there was any "palace revolt" by the barons on the eve of the coronation. The records in particular are strong evidence against any hasty improvisations of the oath. This particular statement will be discussed very briefly in a moment. In the general history of the period, Mr. Richardson urges, there is equally little to support the view that Edward II's reign, after the coronation, was influenced (except in the king's favour) by the Coronation Oath. There is nothing to suggest that Edward was reluctant to enter into the limited contract which Mr. Richardson sees in the fourth promise, and nothing to suggest that Edward did not loyally keep such contract as he made. The real issue between him and his subjects was not the Coronation Oath, but the right of the magnates to constrain him to rule as he ought. This is the principle set

² In the articles cited at the beginning of this chapter. It is perhaps only fair to point out, for the benefit of students, that Mr. Richardson's arguments evolved considerably from the time when he first wrote about this problem in company with Professor Sayles, until his final expression of opinion in *Speculum*, XXIV.

forth in the articles presented to Edward prior to the Ordinances of 1311. In all the documents connected with the latter, there is not the slightest evidence that the extraordinary procedure under which they were prepared had been envisaged at the time of the coronation; while it is evident that the king's assent could not be dispensed with if the Ordinances were to have effect. The Coronation Oath was actually used by the king in order to object to certain features of the reforms.³ The king's advisers maintained that to accept the Ordinances of 1311 would be against the oath sworn at his coronation. They recognized that the fourth clause bound the king to maintain the Charters amongst other laws that the commonalty had chosen,⁴ but not that it bound the king to concede the Ordinances.

Edward's attitude, it is claimed, was consistent throughout. For instance, in his moment of triumph, at the time of the Statute of York in 1322, he did no more than annul the Ordinances; his enactments had no discernible relation to the fourth clause of the Coronation Oath. The oath was actually involved in the preamble to the Statute of York. Thus the fourth clause left no imprint on the legislation and politics of the reign. It simply protected Edward's subjects from the arbitrary rescission of rightful laws to which they had assented and, inferentially, from arbitrary law-making against their will.⁵

This is a very logical pattern. It would perhaps be out of place to discuss it in detail in this volume. All that can be said here, perhaps, is that an equally convincing pattern of the reign can be constructed on the hypothesis that Edward promised

³ The king was prepared to assent to the Ordinances, but not those prejudicial to his person, the Crown, the established law and, specifically, the Coronation Oath.

⁴ The Ordinances, it was argued, were almost all contrary to the Great Charter and the Charter of the Forests, which the king could not prejudice because this would be against the oath sworn at his coronation. This, Mr. Richardson concludes ("English Coronation Oath," p. 70), seems plainly to refer to the fourth promise of the oath. It is certainly arguable that this is the case, though a case can be made out also in favour of the first clause. Perhaps the question may be regarded as still open.

⁵ *Ibid.*, 75.

simply, in the fourth clause of his oath, to accept just reforms which were to be chosen for him at a later date.⁶ That seems to be the straightforward meaning of his promise; and it can be argued that there is nothing to contradict this interpretation in the course of Edward's reign. Both sides, and not only the king, made appeal to the king's coronation promises. Thus, for example, when Edward refused, at first, to appoint the Ordainers, the magnates threatened to reject him altogether as king, "especially as he would not fulfil the oath taken at his coronation."⁷ Stubbs, amongst others, believed that this was a reference to the fourth clause of the oath, though we cannot have certainty on the point.

What has always to be remembered in evaluating appeals to the Coronation Oath is that the oath contained four clauses and not only one.⁸ It was quite possible for the king, in particular, to appeal to the first clause to neutralize any concession he made in the fourth. Perhaps this was, indeed, one reason why the barons could not make any effective use of the oath. It seems likely that, in face of such difficulties, these general arguments, regarding the meaning of the oath, though useful, will fail to be conclusive. The matter will have to be settled mainly by the testimony of the records and the chronicles.

Of these we must perforce concentrate mainly on the chronicles. The records unfortunately fail to give us a very satisfactory indication of the circumstances behind the oath. Nor is this very surprising, for records are normally most reticent on questions such as these. Mr. Richardson is, for example, very naturally reduced to hypothesis when he explains why the Westminster Abbey Order of Coronation originally lacked the "prefatory" rubric.⁹ Indeed, he has two slightly

⁶ This pattern is set forth in the Introduction above, and can be examined there. It is also put forth in my articles cited above.

⁷ Quoted in *Speculum*, XIX, 459.

⁸ It would perhaps be well to consult them at this stage; Document II below. There were four clauses, that is, in the official copy in the Close Rolls. Other copies showed three clauses and an introductory question.

⁹ The lines were later written on the inside of a pair of leaves and inserted at the beginning of the Coronation Order; H. G. Richardson, "Early Coronation Records," in *B.I.H.R.*, XVI (1938), 10.

different hypotheses, of which the first actually seems to be more attractive than the second.¹⁰ Similarly we are, as yet, quite in the realm of hypothesis when we account for the existence in the fourteenth century of different versions of the Coronation Oath.¹¹

We are even indulging in some speculation when we cite the records to prove that the new form of Coronation Oath was no sudden innovation. The ground, it has been argued, was prepared for it by changes in the thirteenth century. The records show that the Order used in the coronation of Edward, including the promise, was compiled in a leisurely fashion some time before. It cannot have been a hurried improvisation due to a quarrel. Whatever the chronicles may say, the idea that the new oath was the outcome of a last-minute conflict between Edward and his barons must fall to the ground.

On the other hand, though Mr. Richardson has probably shown that a general revision of the Coronation Order was undertaken some time before the coronation, he can only guess that this followed a decision to recast the Coronation Oath.¹² That an agreement on the terms, though not necessarily the precise words, of the oath formed the starting-point of all the long work of preparing the necessary books for the coronation

¹⁰ His first (with Professor Sayles) is in *B.I.H.R.*, XIII, 135; his second is in *Speculum*, XXIV, 57, both cited above. His first is simply that the final Order represented a hasty and botched piece of work, with part of the first rubric added late through the chance discovery of an earlier, thirteenth-century Order. His second was that the Order came to be extended because the monks of Westminster added to the Order, as originally prepared for Edward's coronation, an extra passage (based on the thirteenth-century record) which contained reference to perquisites which they themselves were to receive. It happened to contain a good deal more than this. I hope shortly to discuss elsewhere the MSS. of the Coronations of 1308, 1327 and 1377.

¹¹ *B.I.H.R.*, XIII, 147, 148. An explanation suggested is "a disregard for the textual integrity of the oath which we seem to be justified in describing as characteristic of the period."

¹² "Coronation Oath," 58: "the impetus to revise the office came *presumably* from the decision to recast the coronation oath." (Italics mine). Cf. *ibid.*, "the process has, as its starting point, agreement on the terms, though not necessarily the precise words, of the oath." This is possibly true. But there seems to be good evidence of a continued disagreement as to the precise wording of the oath. The problem may perhaps be regarded as not finally solved, though much forwarded by Mr. Richardson's research.

ceremony is one of Mr. Richardson's most powerful arguments from the records, to prove that the oath was no hasty improvisation;¹³ but it has to be based, in the last analysis, on nothing but a conjecture as to the probable sequence of events; and his picture of books which were months in preparation has to be accorded with his own conclusion in an earlier work (in conjunction with Professor Sayles) that the final form of the Coronation Order was a "hasty and ill-considered expansion" of the "first or primitive form."¹⁴ Thus, on close examination, the records prove to promise a great deal, but, in our present state of knowledge, to achieve comparatively little. We must await an even more thorough investigation than they have already received before we can allow them to decide for us the meaning which lies behind Edward II's Coronation Order and his Coronation Oath.

Before turning to the chronicles, a final word must be said regarding the wording of the oath. Much of the significance of the fourth clause depends on the translation of the word *elegerit*. In the interpretation above it has been given a future meaning, "shall determine," so that Edward promised to accept the laws and customs which his subjects were to "choose" for him in the future. No previous English ruler had ever willingly allowed his subjects to "choose" the laws for him. Such a concession cannot be explained, it would seem likely, as Maitland explained it, as being simply designed to bring the Coronation Oath up to date. On the other hand, it has been argued that the translation should be "has determined."¹⁵ In this case,

¹³ *Ibid.*

¹⁴ "Early Coronation Records," *B.I.H.R.*, XIII, 135. Professor P. E. Schramm even saw evidence of a hasty compilation of the oath itself; *A History of the English Coronation*, 205: "The only possible answer to this question is that this part of the sentence was added at the last moment, when an excited debate allowed no time for more skilful drafting."

¹⁵ Mr. H. G. Richardson, in "The English Coronation Oath," in the *Transactions of the Royal Historical Society*, cited above. Mr. Richardson's latest work, partly a reply to my "Coronation Oath of Edward II and the Statute of York," was also called "The English Coronation Oath," a somewhat unfortunate duplication of title. It was printed in *Speculum*, and is also listed above. Unless otherwise stated, references below to the "English Coronation Oath" are to the second article.

Edward only promised, in 1308, to observe the good customs and laws elected by the community in the past, and no particular significance need be attributed to the concession. Thus the translation of this one word involved consequences, for the historian, of the most far-reaching kind.

It has, indeed, also been claimed that there is no need to make this choice between the two tenses.¹⁶ The fourth clause was both "retrospective and prospective." It was "retrospective" because the main intention of the magnates, in forcing the oath on Edward (if, indeed, they did "force" it), was to prevent the king from annulling the Charters, as his father had recently done. It was to deprive him, if he did wish to annul the Charters, of his father's excuse that these were against the rights of the Crown, which the king swore in his Coronation Oath to preserve. His new oath bound him, almost in so many words, not to annul, but to maintain the Charters. This is, indeed, a weighty suggestion; but it seems to be open to one or two serious objections. In the first place, it seems possible that Edward I never did actually annul the Charters, though he clearly showed a disposition to do so.¹⁷ If he did not, the argument seems to lose some of its force. In the second place, even though it probably still remains true that one purpose of the new oath was to prevent Edward from annulling the Charters, it seems unlikely that this was accomplished in the fourth clause. There is more than a suspicion that it was achieved by the wording of the first promise (according to the liturgical order), with its reference to the 'glorious' King Edward and the laws and liberties which he had granted. On

¹⁶ H. G. Richardson, "The English Coronation Oath," 64, 75. But perhaps this attempt to combine both past and future in the same word is not altogether successful. It is a feat we do not usually attempt in our daily lives. In any case, this does not absolve us from the duty of explaining the "prospective" significance of the promise. This looks like only another way of translating "elegerit" by the future tense.

¹⁷ See my *Constitutional History*, I, 65; and H. Rothwell, in *Studies in Medieval History Presented to F. M. Powicke*, ed. R. W. Hunt, W. A. Pantin, R. W. Southern (Oxford, 1948), 319-32. Mr. Richardson has questioned Professor Rothwell's conclusion on this point, in *Speculum*, XXIV, 75.

the other hand, the Charters were not clearly referred to in the fourth promise. They were not "laws" that the people had "chosen." It seems to be very unlikely that this section of the Oath had anything to do with the Confirmation of 1297.

The "retrospective" application of the fourth promise still seems to present difficulties. What of the "prospective"? This means, it is argued,¹⁸ simply that the king was to legislate in future with the advice of his magnates. Once legislation had been enacted, the king's coronation promise was to prevent him from going back on the common undertaking, just as it prohibited him from annulling "laws" which had been made in the past.¹⁹ The choosing of laws by the commonalty would be done when they gave their assent to the king's enactments, which both they and the king were now solemnly contracted to keep. The main argument in favour of this hypothesis seems to be that such a promise was in line with ideas of parliamentary legislation. On the other hand, such an interpretation is difficult to reconcile with the form of words actually employed. The king did not promise to maintain laws enacted with the assent of the people, he promised to maintain those which the people would "choose." Secondly, there is some independent evidence by contemporary writers which supports the literal interpretation of the coronation promise. Thirdly, there is evidence which suggests that the magnates themselves made this same literal interpretation after the coronation. These considerations are so important that one or two of them must be considered at some length.

With regard to the meaning of the words, there seems to be little doubt that, if we confine ourselves to the text, this lends little support to Mr. Richardson's thesis. We may perhaps go

¹⁸ H. G. Richardson, "Coronation Oath," 65.

¹⁹ Of course this principle was probably accepted without the safeguard of a coronation promise. Edward I had freely asserted "that Statute was enacted and ordained with the assent of the magnates and therefore it was not to be revoked without their counsel"; my *Studies*, 248, n. 6.

so far as to conclude that it is only by ignoring the actual wording of Edward's promise that he can be regarded as swearing only to keep laws which he would enact with the consent of his subjects. His own words, at all events, were very different from this. Their import has been well suggested in one investigation: the king will "be bound by future decisions of the common council."²⁰ There now seems to be fair agreement, if we confine ourselves to plain language, that in his Coronation Oath Edward promised to carry out, after his coronation, whatever his subjects might justly demand.

The independent evidence of such a promise by Edward comes from the *Annals of St. Paul's* (Doc. III). The writer of this chronicle describes Edward as making almost exactly the same promise as appears in the coronation.²¹ The force of this evidence can only be discounted, it seems highly probable, by rejecting altogether the validity of the chronicle account. Two important objections have, indeed, been raised against the chronicler's story. The first is that it is incompatible with the records. The second is that, through the unreliability of its author, it is worthless in itself. Neither of these objections is, perhaps, conclusive. The first, indeed, need not again be debated. The records alone cannot, we may perhaps venture to think, in this instance, at least, as yet discredit the chronicle. The second objection is, however, so important that it must be discussed at considerable length.

The *Annals of St. Paul's*, Mr. Richardson argues, were a compilation from several sources. The section covering the years 1307 and 1308 is quite worthless. Large parts of it,

²⁰ H. G. Richardson and G. O. Sayles, "Early Coronation Records," in *Bulletin of the Institute of Historical Research*, XIII (1935), 142. A weighty opinion, to a similar effect, was given by Professor P. Schramm, in *A History of the English Coronation*, trans. by L. G. W. Legg (Oxford, 1937), 207.

²¹ The MSS. do, as Mr. Richardson suggests, make it fairly certain that the fourth clause of the oath was not added as a result of this promise. The form of Edward's coronation promise was already written, though it may even at the last moment have been changed. This does not destroy the significance of the promise recorded in the *Annals* which, in effect, shows Edward being obliged to accept the full implications of clause four of his oath as this is interpreted above.

perhaps, "are hardly worth reading."²² It was written "well after the events recorded."²³ Against this, we have to place the testimony of Stubbs, who edited the chronicle, and who had different views. To the question of how far some errors in a chronicle should invalidate other assertions, there can be no dogmatic or comprehensive answer. The credibility of the author of the *Annales Paulini* for 1308 may be regarded as shaken but not, perhaps, destroyed.²⁴ He was an eye-witness of the coronation. Some of his assertions are corroborated by other writers. No convincing evidence has so far been discovered against his actual story of the quarrel on the eve of the coronation. A sentence of excommunication, proclaimed by the Archbishop of Canterbury against Peter Gaveston, if Peter returned to England after his exile in the parliament of 1308,²⁵ is said to be "conclusive"; but in point of fact it does not seem either to prove or to disprove what the *Annals* assert. It looks as if, failing stronger evidence than this to the contrary, we are

²² "The *Annales Paulini*," 630.

²³ *Ibid.*, 638.

²⁴ It is unfortunate that the latest "test" of the *Annals* is based on a passage which is perhaps slightly ambiguous; H. G. Richardson, *Speculum*, XXIII, 631-2. The chronicler apparently says that the pope conferred the see of Worcester "a few days" after Reynolds was made treasurer. This, Mr. Richardson suggests, shows the writer's complete unreliability. Reynolds was, in fact, made treasurer on 22 August 1307. The bishopric fell vacant on 17 September. The letter giving permission to elect was dated 17 October. The papal bull of provision was dated 12 February 1308. It is just possible that the language of the chronicler could be construed to say that Reynolds was made treasurer and then, the see of Worcester falling vacant a few days after, the pope conferred the benefice on Walter. If the writer of the *Annals* did say this, his chronology was not far out. I hesitate even to suggest this, in view of the opinion of such a Latinist as Mr. Richardson, but perhaps the possibility is worth at least a consideration. The question of whether or not Mr. Richardson has destroyed the general credibility of the *Annals* can only be decided by a careful perusal of his articles, cited above.

²⁵ Matter for discord, he said, was seen to have arisen in the realm, so much so that the magnates were unable, on 28 April, to continue the discussion they had begun. Since the cause of this was not apparent to all, they desired to be made more certain in the matter. It was found that Peter was the cause. Accordingly, by the wish of the king and the assent of the prelates and magnates, it was agreed and ordained that Peter should be exiled, and if he returned from exile, should be excommunicated; *Annales Londonienses*, in *Chronicles of Edward I and Edward II*, I, 154-5. See the *Registrum Simonis de Gandavo*, ed. C. T. Flower and M. C. B. Dawes (Oxford, 1934) (Canterbury and York Series, XL), 237-40. Both copies are in complete agreement in the part paraphrased above, and indeed in all essentials. They do not seem to indicate whether or not there had been any previous action by the magnates against Gaveston.

bound to give the story of the *Annals* at least tentative and provisional belief.

With regard to the fourth point mentioned above, that of the subsequent attitude of the barons, the issue may perhaps be presented by discussing their actions immediately after the coronation. According to the *Annals*, the magnates held a "parliament" at Westminster. The king sent an order that they should deliberate amongst themselves concerning the state of the realm. He promised, with certain reservations, to accept the result of their deliberations.²⁶ No reason is given for such a far-reaching concession. It certainly looks, at first sight, like a consequence of the last clause of the Coronation Oath. If it is, it seems to be a fairly strong confirmation of that interpretation of clause four of the oath which has been suggested above. As in the case of the coronation quarrel, there seems to be no evidence directly contrary to this story. On the other hand, the account is strongly corroborated by a second writer, Walter of Hemmingburg (Doc. IV), who has a very high reputation.²⁷ To invalidate the *Annals* at this point, we must reject not one, but two, near-contemporary writers. Some details they give can, indeed, very properly be questioned. Both reproduce speeches made at this assembly, and Mr. Richardson comments that these speeches may well be inexact. The speeches, he argues,²⁸ were probably in French and unrecorded. The chance that either scribe obtained an accurate summary was slight; and the chance that either of them accurately reproduced in Latin whatever he had been told was remote. The speeches in the two accounts, being fabrications, do not tally. There is no reason, he concludes, to suppose that the sequence of events offered by the chroniclers approaches the truth. From their narratives the recorded facts could not be deduced, and it is difficult to imagine that the chroniclers were adequately acquainted with the recorded facts.

²⁶ It might be thought that there was no need for this, after the king's promise. On the other hand, the king's coronation oath bound only the king; it did not empower his subjects to do anything.

²⁷ See Volume I of this work.

²⁸ "The *Annales Paulini*," 636.

We can agree that the chroniclers probably did not reproduce literally the speeches (if any) which had been made in this assembly. But it is hard to agree that they probably could not even reproduce accurately what they had been told, or that they could not make a reasonable translation of French into Latin. This assumes a somewhat staggering incompetence on the part of both chroniclers. In any case the question of the ability of our chroniclers to reproduce speeches may be irrelevant, for Mr. Richardson seems to imply that the speeches do not tally because they were fabrications. The truth is, there may be a very different reason why the recorded speeches do not tally. They were, in point of fact, made by different people.²⁹ Thus they do not have to tally, except in the sense that they fit in with each other. This, it may be suggested, is exactly what they do.

Similarly, we may venture to think, it is not very surprising that the recorded facts about the assembly of magnates cannot be deduced from the chronicles. The two sets of sources seem to be related to different assemblies. The chronicles seem to tell us about an assembly which may not have been summoned by writ, and hence may not have been recorded.³⁰ The records tell us of a meeting which seems to have met about a month

²⁹ Walter of Hemmingburg (*Chronicon*, II, 270) gives the speech of the Earl of Lincoln, asking the king's messengers if Edward would confirm in writing his direction to them to ordain concerning the state of the church and of the crown and concerning the peace of the land; and asking them if Edward would promise to hold firm whatever they ordained. The *Annals* (*Chronicles of Edward I and Edward II*, I, 262) records a speech by one of the barons; but the writer has already described how, when Edward directed them to treat about the state of the realm, and promised to seal that which they ordained, which was to the honour of God and the church and to the profit of the king and the realm, the magnates sent back asking Edward for his commission to act. This last sounds something like the speech of the Earl of Lincoln. There are important differences between the two accounts of the meeting of 27 February or 4 March; but there seems to be little doubt that both writers are describing the same meeting and are in agreement on some important facts.

³⁰ The record of writs issued tells us that a parliament was summoned to meet on 3 March, but it may have been postponed. At any rate, on 10 March a summons was issued for 28 April. The assembly of magnates met immediately, or very shortly, after the coronation on 25 February; and it seems possible that the magnates were already present for the coronation, and may have met without an official summons by the king, though Hemmingburg (II, 270) says that the king sent to tell them to meet at Westminster.

later. The truth of the chronicles should not, perhaps, be made to stand or fall by reference to official records with which they may never have been intended to agree.

In any case, it can be argued, the accuracy of the speeches contained in the chronicles, and the extent to which the latter tallied with the official record, are not the real points at issue. The real point would seem to be whether or not we can believe two independent writers when they show us the magnates, after the coronation, meeting to reform the state of the kingdom, and apparently counting on the king to accept whatever they ordained. Perhaps we should conclude that no evidence has so far been produced which is strong enough to outweigh their combined testimony. If we do come to this conclusion we should, apparently, find in this episode after the coronation a strong confirmation of the story of the *Annals* that Edward, before he was crowned, gave the magnates a solemn promise to accept their reforms.

Thus, after this lengthy discussion, it seems possible, tentatively and subject to correction by further discoveries on this important problem, to conclude that the weight of evidence does not support the thesis of both a retrospective and prospective application of the fourth clause of Edward II's coronation promises, or the underlying argument that Edward did not, at his coronation, concede anything that conflicted sharply with established political traditions. On the contrary, it seems to suggest that he promised whatever just laws his subjects would "elect" in the future; and that this was an unprecedented concession, more derogatory to the ruler than even the reforming promises of 1258. If the word "just" left Edward a loophole for escape from any particular proposal, it hardly changed the general significance of his concession. Not only did Edward make this concession but also, it is probable, his subjects promptly expected him to begin acting upon it. The evidence for these conclusions seems to be consistent and not confined to any one source. It is mainly from the chronicles; but it is not incompatible with the records. It is as satisfactory as that for other important episodes, for example the Protest of the

Communitas Bachelerie Angliae in 1259.³¹ Until more evidence is forthcoming, it does not seem unwise to accept it, at least tentatively and with due reservations. The nature of the first major political crisis of the fourteenth century may possibly be regarded as being still the subject of interesting differences of opinion, but with its main outline established, for our purposes, beyond reasonable doubt.

The problem has been worth discussing at length because, if the above conclusion is correct, the coronation promise must be regarded as one of the keys to an understanding of all the early years of Edward's reign. It shows that the reign began in dissension and that this dissension was probably caused by something deeper, as well as by dislike of Gaveston. There was evidently a desire amongst the magnates for some general reform. The nature of the reforms contemplated will be more evident after a study of the Declaration of 1308 and the Ordinances of 1311. We may venture to conclude, meanwhile, that the Coronation Oath itself presented a very serious challenge to the ruler. As part of the coronation ceremony it could not be simply annulled. Yet whilst it persisted it placed the king in an almost unprecedented subordination to his own subjects. It gave the community power, more unlimited than it had ever possessed before, of initiating "just" legislation. It was one reason for the long succession of reforming "ordinances" which the magnates expected Edward II to accept at their hands. It helps to explain the Declaration of 1308, the execution of Gaveston, the reforms of 1310-18, the Statute of York and perhaps, to a slight extent, even the deposition of Edward II. Amongst the other things for which Edward ultimately lost his throne was his failure to keep his Coronation Oath. It is possible to explain the reign without it. Indeed such an explanation has been brilliantly accomplished, not only by Stubbs, but even more fully by Tout. But without it, the attitude of the magnates, especially in the early period from 1308 to 1312, remains not easy to understand.

³¹ Volume I of this work, 141-3, 171-2.

Closely connected with the Coronation Oath was the famous Declaration of 1308. Like the fourth clause of the oath, this was unprecedented. It made a distinction, of great constitutional importance, between the Crown and the person of the king, claiming that homage and allegiance were due to the former, rather than to the latter. Consequently, the magnates might be called upon to oppose the king if his rule militated against the welfare of the Crown. In some sense, at least, their obligation to the Crown was greater than to the monarch. If the latter was determined to do wrong, appeals to his own judges would not serve to restrain him. Therefore he was to be restrained by force.

This Declaration possibly formed the prelude to a formal indictment of Gaveston in the parliament after Easter 1308.³² In the first paragraph of the indictment Gaveston was charged with treason. In the second it was stated that, since he could not be judged or attainted, by reason of the king's protection, in an action at law, the people had awarded him to be a robber of the people and a traitor to his lord and the realm, as though he were a man attainted and judged. Therefore, the king was begged to execute the award.³³ There are some interesting features about this indictment, especially the idea of the "people" awarding a magnate to be a traitor, perhaps the first clear foreshadowing yet discovered of Impeachment.³⁴ But the important points at the moment seem to be, firstly, that it seems to offer confirmation of the view offered above of Edward's coronation promise, secondly, that it shows the

³² H. G. Richardson, in "The English Coronation Oath," 66-7, suggests that the articles were concocted after the Ordinances and perhaps after Gaveston's death, and that they represent "merely what some partisan of the more extreme members of the baronial opposition thought appropriate to the case"; but unfortunately he does not give his reasons for this interesting opinion. If the opinion is correct, it will modify a little, but only a little, the conclusions drawn above.

³³ Seeing, they said, that the king was bound by his coronation oath to maintain the laws that the people would choose—*qe le pople eslira*. This was a clear reference to the promise in the fourth clause of the oath. Notice the simple future tense.

³⁴ It is significant that there is no idea whatever of a judgement or award of "parliament." The Canon of Bridlington, in *Chronicles of Edward I and Edward II*, ed. W. Stubbs (R.S., 1883), II, 34, offers some evidence that there was judgement of peers,

Declaration of 1308 actually employed to justify the imposition of a law, or at least an "award," upon the king.

Thus the Declaration of 1308 was apparently a pronouncement of the greatest constitutional importance. After it was made, opposition to the king was justified not only on the narrow grounds that he had failed to keep his coronation promise, but also on broad constitutional principles which lay at the basis of the state. It combined with the Coronation Oath itself to constitute the beginning of a new period, or what might have been the beginning of a new period, in the relations between the community and the king.³⁵

There are a number of reasons why the Declaration has not been regarded as of great importance. Much stress has recently been laid on the traditional Right of Rebellion (*Widerstandsrecht*) as an integral part of medieval political thinking, with its roots deep in Patristic writing as well as Teutonic custom, and its influence discernible in the history of most medieval states. It lay, it has been asserted, behind the Great Rebellion of 1214-15, and it influenced radical thought in the age of Simon de Montfort. Hence, it is argued, the magnates of 1308 only gave sharpness and definition to ideas which were really a commonplace of medieval thought.

It is possible, however, that the validity of this argument is open to question. Professor Fritz Kern's theories of the right of opposition have deservedly won wide recognition; but they may have been a little less applicable to the English state than he considered them. Even the movement which gave rise to Magna Carta did not serve to establish, as indeed it had not clearly relied upon, any such theory. The famous clause 61 which empowered the magnates, under certain conditions, to distress the royal lands and castles³⁶ was not a general *Wider-*

³⁵ According to the Canon of Bridlington, it was the result of deliberations by the magnates and the king's council; *Chronicles of Edward I and Edward II*, II, 33. It was introduced into parliament by the Earl of Lincoln; H. G. Richardson, "Coronation Oath," 66. It was evidently regarded as of great importance at the time.

³⁶ T. P. Taswell-Langmead, *English Constitutional History* (10th edition, revised and enlarged by T. F. T. Plucknett, London, 1946), 98.

standsrecht, and was not retained in later reissues of the Charter. A much more explicit assertion of the theory appeared in the troubles of 1258-65, when it was said that the magnates had a right to put a bridle upon the king; and it has been said recently that "medieval thought steadily contemplated the possibility of rebellion being the only practicable means of redress";³⁷ but in spite of that, no document containing such a sentiment had ever before 1308, except in Magna Carta, received even indirect endorsement by the king. The invitation to civil war which was implicit in the *Widerstandsrecht* may possibly be regarded as never really congenial to the medieval English mind. Perhaps the Declaration of 1308 was, therefore, somewhat more radical than has been thought.

Another reason for this lack of importance, in the eyes of modern writers, has been the fact that the Declaration was apparently, in 1321, condemned by the magnates themselves. They cannot therefore, it seems to follow, have attached much significance to it.³⁸ However, it is possible that the attitude of the magnates in 1321 has been partly misunderstood.³⁹ The Marcher lords may at first, in their revolt of this year, have taken their stand on the Declaration, and only renounced it under pressure from the king. Thus, long after its first issue, both royalists and opposition united in testifying to its importance. The events of 1321 become a reason for believing in, not rejecting, the idea that its principles had great constitutional significance.

The importance of these principles lay not only in the *Widerstandsrecht*. It lay in a new formal distinction between the Crown and the person of the monarch. The Crown represented the interests of the "people" as well as of the ruler. The magnates were bound by oath to maintain the estate of the Crown; they were also bound to protect the "people." Thus

³⁷ T. P. Taswell-Langmead, *English Constitutional History* (10th edition), 98.

³⁸ Though we can now see that the magnates in 1321 were probably copying very closely the procedure of 1308.

³⁹ See my "Sherburn Indenture and the Attack on the Despensers, 1321," listed below.

they had a twofold duty, ultimately resolved into one perhaps by identifying the welfare of the "people" and of the Crown. This twofold obligation had precedence over their simple duty to support the person of the ruler. Their political philosophy both appealed to the importance of the community and turned its back on the traditions of personal monarchy. They began to reach out for a concept of their political obligations which directed these towards the whole *Respublica Anglicana* rather than towards the person of the king.

The Declaration shows, however, that they thought in terms of law as well as of violence. They did, indeed, justify coercion of the ruler; but they justified that coercion by the absence of an impartial tribunal before which their grievances could be remedied. Their desire was for a tribunal which was not like the existing courts of the king, the expression merely of the royal justice which an unreasonable ruler could pervert. In this "court" the magnates and the "people" whose interests they protected, as well as the king himself, would logically have a part. Such a court was not yet, and might never be completely, within the bounds of practical politics. But at least it seems likely that, if the Declaration of 1308 attempted to "legalize" violence, it also promoted the long trek away from the use of violence in politics, towards the ascendancy of the law.

The distinction between king and Crown in the Declaration, it may be finally suggested, whilst not entirely new, helped to clear the way for a new concept of sovereignty in England. The Crown, as the apex to the political structure, represented the interests of, and was supported by, both community and king. The conjoint activities of these two in the end created a new sovereignty of king and community in parliament.⁴⁰ This may well have been one of the great political discoveries of the fourteenth century; and the fact that the Declaration of 1308 helped clear the way for it, makes this constitutional declaration extremely important. Altogether, there is reason to believe

⁴⁰ See my " 'Political Revolution' of the Thirteenth and Fourteenth Centuries," listed in Chapter VII.

that the political thinking behind the Declaration was far from being purely destructive. It represented a real effort to grapple with the urgent political problem of the time.

It might be thought that this long discussion was ample for any one problem; but before we leave the Coronation Oath and the Declaration of 1308, one other general question must be faced, not altogether answered in the discussion above. It must be faced at this point because it is important all through the fourteenth century. How far, even if we concede that the magnates in 1308 demanded the right to choose new laws and violently oppose the king, can their programme be really considered revolutionary? How far were they, in spite of the apparent radicalism of their demands, really striving only for a definition and clarification of existing custom, and trying to incorporate into the constitution practices which had grown up in recent years? This was Maitland's view of the Coronation Oath; and it is the view of many scholars, not only of the demands of 1308, but also of many other enactments in the century, notably the Statute of York in 1322.

In favour of this view is the fact, strongly emphasized in Volume I of this history, that change, in the Middle Ages, was the product of evolution rather than of revolution; that custom was king and revolutions were opposed by every precept, moral or political, of the Middle Ages; that the king and the magnates were each unassailable by the other in the teleological order of the state. Baronial reforms were never deliberate attempts to reduce the king to a permanent inferiority. "That human hands should rashly execute divine vengeance upon God's vicar was a thing too horrifying to be thought: men shrank even from the charge that they had put constraint upon the king."⁴¹ Contrariwise, and perhaps a shade inconsistently, it can be argued that if they did put constraint upon him they had good, sound precedents in 1215

⁴¹ H. G. Richardson, "English Coronation Oath," 65. Though it should be added that they learned only too well how to overcome their horror in the course of the fourteenth century, and that they had even overcome it on occasions in their relations with John and Henry III.

and 1258. Thus there was never anything quite new in medieval reforming programmes, and royalist enactments were never more than a return to the conditions of the past. No modern historian would subscribe exactly to these opinions; but they have nevertheless had an influence on the interpretation of the problems discussed above.

On the other hand, there is a danger in trying to fit medieval actions into too rigid a theoretical pattern; and there was, in fact, during that period a constant need for significant departure from custom in face of very rapid change. Above all, it is necessary to interpret medieval enactments, not primarily on the basis of general theories, but on the basis of the language which they actually employed. If the language of the Coronation Oath and the Declaration is interpreted to mean just what it says and not something very different,⁴² they both seem to have made a very striking departure from the constitution as practised in the reign of Edward I.

Just how great the departure, it is impossible to be certain until we know more about the preceding period, especially between 1297 and 1308.⁴³ Nevertheless, it seems probable, the only precedents on which the proposals of 1308 could fairly be based were those from the "revolutionary" periods of 1215 and 1258. Indeed the reformers of this period were associated by contemporaries with Simon de Montfort. Precedents for their ideas must be sought in the *Addiciones* to Bracton and in the *Song of Lewes*.⁴⁴ How far they meant, and understood the implications of, every word they got inserted in the Coronation Oath and expressed in their Declaration is a difficult problem. The assumption made in these pages, rightly or wrongly, is

⁴² This warning is not entirely superfluous, as can be seen by reading what some historians have made out of the fourth clause of the Coronation Oath. Their interpretation may be correct; but some of them have departed very far from the words of that brief and simple coronation promise.

⁴³ There was some discussion of this in Volume I of this history, 63-7; and in H. Rothwell's "Edward I and the Struggle for the Charters, 1297-1305," in *Studies in Medieval History Presented to F. M. Powicke*, 319-32.

⁴⁴ My *Studies*, 250; R. W. and A. J. Carlyle, *A History of Medieval Political Theory in the West* (Edinburgh and London, 1903 ff), III, 72; G. Lapsley, in *E.H.R.*, LIII (October 1938), 699-704; H. G. Richardson, *T.R.H.S.*, XXVIII, 21-45.

that the political understanding of the period, like that in philosophy, theology or law, was of a comparatively high order. It is assumed that by the fourteenth century we are long past the stage when politics were a matter, for bishops and barons, of simple pragmatic action. Even if the leading magnates of Edward II's reign did not understand the niceties of the political problem, they had highly skilled lawyers and administrators to guide them. It has been conjectured, for instance, with some plausibility, that a chancery clerk wrote the *Modus Tenendi Parliamentum* at this time, to constitute what must have been an extremely skilful and understanding manifesto for the Lancastrians in 1321.⁴⁵ Something similar is almost certainly true of the *Tract on the Office of Steward*.⁴⁶ Magnates who sponsored these pamphlets cannot have had a great deal to learn about the current problems of the constitution. Many of the documents printed in the following pages were made after long, exhaustive and stubborn discussions, such as those between Edward, Lancaster and the Middle Party which preceded the "Treaty" of Leake. The odds are that their language, if we could understand it completely, would be found to have been chosen with meticulous care.⁴⁷

Thus we are forced to conclude, it would seem, that the political implications of important pronouncements like the Declaration of 1308 cannot be discounted on the grounds that contemporaries probably did not understand them. Documents like these, including those just mentioned above, are,

⁴⁵ W. A. Morris, "The Date of the 'Modus Tenendi Parliamentum'," in *E.H.R.*, XLIX (July 1934), 407-22. It is very interesting to find a chancery clerk, William Thunnerk, petitioning for reinstatement, probably in January 1327, on the grounds that he had been dismissed without cause by Hugh Despenser and Robert Baldock; *The English Government at Work, 1327-1336*, I, ed. J. F. Willard and W. A. Morris (Camb., Mass., 1940), 203, n. 3. But Mr. Richardson still dates the *Modus* at the very end of the fourteenth century; "The Commons and Medieval Politics," in *T.R.H.S.*, XXVIII, 27.

⁴⁶ Printed by L. W. V. Harcourt, *His Grace the Steward and Trial of Peers* (London, 1907), 164-7.

⁴⁷ For a similar and very weighty opinion about the language of the Statute of York, see G. Lapsley, in "The Interpretation of the Statute of York," *E.H.R.*, LVI (January 1941), 29; and *ibid.*, 30, quoting with approval G. Haskins, *The Statute of York* (Camb., Mass., 1935), 98.

accordingly, of the greatest possible importance; and it is probable that no interpretation of this period, from the standpoint of either politics or the constitution, can be considered satisfactory which does not take them fully into account.

(c) *Documents*

- I. Extract from the Coronation Order of Edward II.
- II. Coronation Oath of Edward II.
- III. Events of 1308, according to the *Annals of St. Paul's*.
- IV. Events of 1308, according to Walter of Hemmingburg.
- V. Declaration of 1308.

I. *Part of the Coronation Order of Edward II, describing the duty of the magnates*

Order of constituting the new king in the kingship [*regnum*]. The day on which the new king is to be consecrated, early in the morning, the prelates and nobles shall gather in the royal palace at Westminster to treat together concerning the consecration of the new prince and concerning the confirming and firm enactment [*statuendum*] of the laws and customs of the realm. An elevated place shall be provided in the said palace on which the king's heir who is to reign shall be elevated with all gentleness and reverence, after having first bathed as is the custom and after being clothed in spotless apparel and shoes without spurs. When this has been done, the archbishops, bishop, abbot and convent of Westminster and others shall arrange themselves in the church, with silken copes . . . and other things suitable to the procession. Thus vested, they shall go in procession to meet the future king in the palace. And they shall lead him in procession to the church; they shall conduct him in and shall place him in his seat on a platform.

—From the Bodleian MS., Rawlinson, c. 425; printed by L. G. W. Legg, *English Coronation Records* (Westminster, 1901), 85-6; *Foedera*, II, 33.

II. *Coronation Oath of Edward II*

"Sire, will you grant and keep and by your oath confirm to the people of England the laws and customs given to them by your predecessors, the just and god-fearing ancient kings of England, and especially the laws, customs, and liberties granted to the clergy and

people by the glorious king, the sainted Edward, your predecessor?" "I grant and promise them."

"Sire, will you in all your judgements, so far as in you lies, preserve to God and Holy Church, and to the people and clergy, entire peace and concord before God?" "I will preserve them."

"Sire, will you, so far as in you lies, cause justice to be rendered rightly, impartially, and wisely, in compassion and in truth?" "I will do so."

"Sire, do you grant to be held and observed the just laws and customs that the community⁴⁸ of your realm shall determine, and will you, so far as in you lies, defend and strengthen them to the honour of God?" "I grant and promise them."

—From the *Statutes of the Realm*, I, 168; Wilkinson, in *Essays in Honour of James Tait*, cited above, p. 405.

III. *The Annals of St. Paul's on the events of Edward II's Coronation*

The king, by reason of his too great love for him, called Peter [Gaveston] his brother; but the people called him the idol of the king, whom the king feared to displease as he might fear his father, and whom he was zealous to please as he would be zealous to a superior. The king *in opere* granted to that Peter different kinds of favours in regard to his subjects which, by the royal prerogative, belonged to the king alone and not to another. For if anyone of the earls or magnates had to ask a special grace of the king, in the forwarding of any business, the king would send him to Peter; and whatever Peter said or commanded would be immediately done; and the king also would accept it. Whence all the population was angry, [believing that] two kings ruled in the one kingdom, one nominally, the other in reality.

About that time the king celebrated his coronation at Westminster . . . 25th day of February. . . .

But the said lord [Archbishop] of Canterbury, who was held up by illness and could not get there by the appointed day, because the time was short, gave his commission to act in the matter to three other bishops, namely [Henry] of Winchester, Simon of Salisbury and John of Chichester. The day of the king's coronation then came. And there arrived from overseas counts Charles and Louis, uncles of the queen, John duke of Brabant and Margaret the duchess, sister of the king of England, Amadeus count of Savoy and many

⁴⁸ *La communauté*.

other honourable men, together with all the prelates and magnates of this realm.

That day, the earls and barons, having associated with them the aforesaid French magnates, treated together⁴⁹ about the state of the kingdom; and they demanded from the king the removal of Peter Gaveston from the kingdom. The king would not agree. Therefore, the earls proposed forthwith to obstruct the coronation. Hearing this, the king promised in good faith that he would carry out, in the next parliament, whatever they proposed, so long as the coronation was not put off. . . .

Then [February 27] the magnates held a parliament at Westminster, in the refectory of the monks. To this, the king sent an order that they should deliberate amongst themselves concerning the state of the realm; and if anything came out of their deliberations which was to the honour of God and of the church and to the profit of the king and of the realm, he would, beyond doubt, add the weight of his own seal, in confirmation to their scheme.⁵⁰ The earls sent back asking him to give them a commission to proceed in these matters; and they demanded also from each other that each one of them would promise, each by an oath of faith, that he would keep what was ordained by the magnates.

But the king deferred his reply to their demand. And one earl, indignant at their requests, similarly remarked: "Show me first the articles which I am to swear to accept. I shall keep them when I have seen them; if not I will not give them my loyalty." The rest replied: "You must know that we cannot, without the king's commission, after his mandate,⁵¹ ordain anything concerning the business of the realm; and in consequence, we cannot produce anything in words which has not yet been conceived in our mind." Thus, the royal assent being daily postponed, the earls went home, having agreed on a day for return, on April 28, [to see] if they could agree then.

—From the *Annales Paulini*, in *Chronicles of Edward I and Edward II* (R.S.), ed. W. Stubbs, I, 259–63.

⁴⁹ *Tractaverunt*: as in parliament.

⁵⁰ *Dispositionem eorum sigilli sui munimine roboraret.*

⁵¹ *Sine commissione regis, post mandatum suum.*

IV. *Another version of the events of the Coronation, by Walter of Hemmingburg*

... and he was crowned ... [25 February] amidst the rejoicings and exultations of the people of both lands [i.e. of England and France, the latter on account of Isabella].

And when the ceremony was over, the king sent to tell his magnates to meet at Westminster, so that they might deliberate and ordain under three subjects: [firstly] concerning the state of the church, which in times past had declined; [secondly] concerning the state of the crown which he had lately assumed, how it might, according to God and justice, be governed; and [thirdly] concerning the peace of the land, how it ought to be observed by the people. When he heard this, that noble councillor⁵² the earl of Lincoln, who used to be at the head⁵³ of the deceased king's council, replied: "Thanks be to the good God who gave us, after the wisest of rulers, the beginnings of a good king! Who is there who does not delight in such a mandate? We should certainly be happy about these things, and apply ourselves diligently, with all our minds, to the carrying out of these three articles. Now, if it is your pleasure that I should answer, I ask that all those who consider my reply reasonable should raise their hand to God. My friends, if we should labour thus and remain here at great expense, it is proper that our labour should be fruitful and of permanent worth." Then, looking towards the messengers, he went on: "So now we ask that our lord king should confirm in writing that which you have informed us orally, namely, that he will consider as settled and firm⁵⁴ whatever, by the inspiration of God, we shall be led to ordain in these matters."

This reply pleased everybody, and all who were present raised their hands on high, except the two messengers from the king, namely the earl of Lancaster and lord Hugh Despenser. The earl asked them: "Why have you not raised your hands with the rest? Are you not our peers and consorts in the realm? By the living God, if you do not agree with us, you will be [held] as strangers by us, and almost our chief enemies." But the messengers replied: "Forgive us, my lord, for we shall always be constant with you in our loyalty to the welfare of the realm. But since we are not yet certain of the king's will, we shall go back to him and find out, without delay." They went, and they returned, saying on behalf of the king that the king did not wish

⁵² *Consiliator*.

⁵³ *Capitalis consiliarius*,

⁵⁴ *Ratum habere et firmum*.

the magnates to tire themselves further, at the moment; but that they should return home, with his thanks, until a fortnight after Easter. Then they should return to London, to his parliament, to deliberate about the foregoing."

—From the *Chronicon* of Walter Hemmingburg, ed. H. C. Hamilton (London, 1849), II, 270-1.

V. *Declaration of the magnates distinguishing between the crown and the person of the king, made in 1308, and again in 1321*

Homage and the oath of allegiance are stronger and bind more by reason of the crown than by reason of the person of the king, [and the "people" is attached more to the crown than to the person];⁵⁵ and this appears in that before the estate of the crown has descended on a person, no allegiance belongs to the person or is owed. Wherefore if the king by chance be not guided by reason, in relation to the estate of the crown, his liege subjects are bound by the oath made to the crown to guide the king back again by reason and amend the estate of the crown; otherwise the oath would not be kept. Then it is to be asked how they ought to guide the king back in such a case, whether by form of law or by violence. He [the king] cannot be directed by course of law, for there are no judges but such as are the king's. In which case, if the king's will be not according to reason, he will only have error maintained and confirmed. Wherefore it behooves, in order to save the oath, that when the king will not redress a matter and remove that which is damaging to the crown and hurtful to the people, it is adjudged that the error be removed by violence; for he, the king, is bound by his oath to govern the people [and his lieges],⁵⁶ and his liege subjects are bound to protect the people according to the law, with the help of the king.⁵⁷

—Printed in the Canon of Bridlington's *Gesta*, in *Chronicles of Edward I and Edward II*, II, 33. The version of 1321 is given in *Ibid.*, 65, and in *Statutes of the Realm*, I, 182.

⁵⁵ This reference to the *populus* is an insertion of 1321.

⁵⁶ *Statutes of the Realm*, 1321.

⁵⁷ The 1321 version is much changed here: the *Statutes of the Realm* version is "are bound to govern in aid of him and in default of him"; the Canon of Bridlington has "are bound through the oath which he took to rule with him and support him in his rule, and also to set right the defects of the king." I hope to make comments on these and other variations in a forthcoming publication.

Chapter II

THE ORDINANCES OF 1311

(a) *Some Recent Works*

CLARKE, M. V. *Medieval Representation and Consent* (London, 1936).

DAVIES, J. C. *The Baronial Opposition to Edward II* (Cambridge, 1918).

TOUT, T. F. *The Place of the Reign of Edward II in English History*, 2nd edition, ed. H. Johnstone (Manchester, 1937).

WILKINSON, B. *Studies*, Chapter IX.

(b) *Introduction to the Documents*

BEFORE reference is made to the five documents in this chapter, something should be said of the issues raised by the Ordinances of 1311. These Ordinances represent the first great reforming programme of the baronial opposition to Edward II; they were the sort of thing which the magnates might have had in mind in 1308. To Stubbs, they were an illustration of the continuity of constitutional reform. The barons put forward once more the old claims of the thirteenth century; the main difference is that they cut deeper into the substance of royal power. The Ordinances were not, Stubbs believed, in their important features in advance of the Provisions of Oxford; the privileges asserted for the nation were to be exercised only by the baronage, and the third estate was nowhere clearly included. In respect of parliament, and the constitutional importance of the knights and burgesses, Stubbs thought the barons of 1311 were behind their times. Their aim was only to restrict the royal power by insisting on the traditional counsel and consent in the appointment of officers of the king, in the decisions regarding war and peace, and in other important matters; and by insisting on the subjection of the king's government to the dictates of custom and law.

Modern writers have, in one respect, departed greatly from this interpretation. The issues, Professor T. F. Tout and Mr. J. C. Davies contended, went deeper than Stubbs perceived. Attempts of the barons to share in or control the king's government, in the manner of the thirteenth century, were now clearly destined to failure. Government had ceased to be personal and had become much more complicated. The key to it lay in the administration. Next to the king, at the centre, there lay the household and the council. The former was the group of personal servants and advisers, like the Keeper of his Wardrobe or the Keeper of his Chamber or (later) the Keeper of his Privy Seal, through whom the king gave immediate effect to his wishes. They either carried out the king's orders or passed them on to other officers more remote from the person of the ruler. These latter officers—the Chancellor, Treasurer, justices and so on, the so-called officers “of state”—had moved away from the king's side through the needs of their administrative and judicial duties, and had found headquarters in Westminster. There, they served the nation, and were conscious that they served the nation, besides serving the king. When they carried out the king's commands, expressed through his household officials, they were, in a sense, subject to the household “system.” If the magnates had no influence on the household officials, these historians concluded, it was useless for them to share in the appointment of Chancellor or Treasurer. Baronial policy had therefore to be broadened and changed to include, as a primary aim, the destruction or capture of this household “system” of government. The true centre of political strife in the early fourteenth century was consequently not the parliament or council, as in the previous century, but the household, a fact which Stubbs had not been in a position to understand.¹

¹ Another centre of struggle, Mr. Davies believes (*Baronial Opposition*, 350), lay in the council; but not the council as it was understood in the thirteenth century—the body of the king's advisers—but rather a new “administrative” council. This was the true executive, next to the king, carrying on much of the administration of the country in the king's name. Control over this council was as important to the baronial opposition as control over the household administration; it was, indeed, very much the same thing, for the most effective members of this council

The decisive evidence for this theory has been seen in the Ordinances of 1311 (Doc. IV below). These are thought to have aimed a crippling blow at the usefulness of the household system as an instrument of prerogative. Thus, they show the real aims of the opposition. Some arguments for thinking that this theory may have been pressed too far have been given elsewhere;² but one or two of them may be briefly recapitulated here. In the first place, it is doubtful if any clear distinction between the system of state and of household administration was recognized by contemporaries, even as late as the reign of Edward II. In the second place, it is hard to prove that, if the distinction was made in 1311, it was used to attack the household system. It is not certain, for instance, that such an attack would have been within the scope of the Ordainers' commission; though this, of course, would not have prevented them from trying to carry it out.³ Thirdly, and most important, it is hard to see this purpose in the clauses of the Ordinances themselves. Two of these are particularly important. Clause 4 says that the customs of the kingdom shall be received and kept by men of the kingdom, and not by aliens; and that the issues and profits pertaining to the kingdom shall in their entirety come to the king's Exchequer and be paid by the Treasurer and Chamberlains for maintaining the king's household and other purposes; so that the king may live of his own without taking *prises* other than those anciently due and accustomed. Clause 14 says that whereas many evils have

were the household officials. Thus the twofold objective of the magnates turned out, in the final analysis, to represent one single aim. "The primary object of the baronial opposition was to break down the system of government which has been called the household or the personal system."

² See my *Studies*, listed above.

³ It seems likely that the "state" of the king was, by omission, excepted from the scope of the reforms. Yet any attack on the household "system" as such would probably have been regarded as an attack on the estate of the king. Edward is said to have rejected the ordinances at first, because they did not conform to this limitation. On the other hand, he did not specify exactly how they exceeded the bounds of the Ordainers' commission. His objection was not pressed. It shows that contemporaries were keenly aware of the limitations in the Ordainers' powers. Other features of their reforms suggest that they were not unreasonable in the use of these powers.

been incurred through certain wicked councillors and ministers, the king shall appoint the Chancellor, and other important officials, including a fit clerk to keep the Privy Seal, by the counsel and assent of the baronage, and that in parliament.

The first of these clauses, Professor Tout has argued, without so much as naming the Wardrobe,⁴ put a new barrier in the way of its acting as a rival to the Exchequer. This is true; but it is questionable whether it was the main purpose which the barons had in mind.⁵ Wardrobe expenditure was actually shrinking in 1311.⁶ Even if the magnates objected to the revenue being paid into the Wardrobe, legislation against this was not now so urgently required. In any case, since the Wardrobe, backed by the king's order, could still draw what it needed from the Exchequer, without let or hindrance so far as we know, and in block grants, it is hard to see how the new regulation of 1311 would greatly diminish the importance of the Wardrobe as an instrument of the royal prerogative.⁷ Finally, the object of the clause was actually stated by the barons. It was to prevent the exaction of illegal impositions by the king. Some support is lent to their protestation by the fact that we know that the barons were troubled by the farming of customs which kept them from the royal treasury. Hence it seems tempting, in spite of Professor Tout's brilliant analysis, to think that the magnates really intended what they said they intended, and probably nothing more. Their main purpose was probably not so much to attack the household "system" as to improve the national finance.

The idea that the barons, in clause 14, were trying to take the Privy Seal "out of court," or to obtain a control over

⁴ It is to be noticed that the Wardrobe, not the Chamber (in spite of its revival), is regarded by Professor Tout as the main object of attack.

⁵ My *Studies*, as cited above, Chapter IX.

⁶ See the figures given by T. F. Tout in *Place of Edward II*, some of which are reproduced in my *Studies*, as above.

⁷ There seems to be no evidence that the treasurer could refuse to pay out any money, even to the Chamber or Wardrobe, ordered directly by the king. He may possibly have had a duty, similar to that of the chancellor, of opposing demands which did not seem to be in the interest of king and kingdom; but I do not recall any evidence for this.

the Privy Seal, is similarly open to some objections. Perhaps the most obvious one is that the theory presupposes an inability or reluctance, on the part of the magnates in 1311, to say what they really had in mind. The theory also runs into difficulties because it is not easy to square with the administrative practices of the time. It was almost impossible to take the Privy Seal physically out of court in 1311, for the simple reason that the king needed it in court. He had to use it to issue commands and authorizations, during the frequent absence of the Great Seal, unless the business of government was to be hopelessly held up. The Ordainers did, indeed, take the Privy Seal "out of court" in one sense, by ranking its keeper with other state officials and by demanding a share in his appointment;⁸ but this only means, perhaps, that it had already become, as the personal seal of the king, an important instrument of the government. Nothing the barons proposed made it any less a personal seal of the king.

We owe Professors Tout and Davies a great debt for insisting on the importance of the household administration. This system was part of the increasingly complex bureaucracy whose growth was providing a major constitutional problem. The magnates showed how important they considered it by the very great attention they paid to it. They may well have mortally offended Edward by bringing his more personal servants under their influence in parliament, along with the officials "of state." But it is not yet proved that they wished to destroy the household "system." Perhaps we may venture to conclude provisionally, as has been concluded elsewhere, that "with the system of administration household or otherwise the Ordainers had no quarrel";⁹ their real grievance was that it was not being efficiently worked. If this is so, our main point of departure in attempting to understand these Ordinances

⁸ Election gave the magnates an influence over the personnel of all these important offices of government. It did not give them any power to control their daily acts. These, in every case, depended ultimately on the commands of the king or on authority delegated from the crown.

⁹ *Studies*, as above, p. 244.

must be the conclusions of Bishop Stubbs already summarized above.

Before making this attempt, a word or two should be said of the documents translated below. The first of these, describing the preliminaries of the Ordinances, is from a "Life of Edward the Second," once attributed to a monk of Malmesbury. "The writer inclines to pose as a political philosopher; he hates the court, he criticises the pope, he has a pitying contempt for the king, he thoroughly despises the political bishops, and he has the laws and histories at his fingers' ends. He might be a teacher in a university or a retired civilian, but could scarcely be a monk."¹⁰ The second was probably written by a Canon of Bridlington, who ranks high, Stubbs considered,¹¹ among the second-rate authorities for a period which is singularly deficient in first-rate authorities. He is, in the main, very reliable; and he gives views and material to which he had access due to his Northern (and possibly Lancastrian) connections. The third document is derived from the *Annals of London*. For the period under discussion, these *Annals*¹² "contain a relation, which is simply invaluable, of the closing events of this reign and of the early troubles of the next. The selection of documents in it is most judicious, the local notices are interesting, and the illustrations of constitutional history are most important."¹³ It is here used as a source for the very important preliminary enactments by the magnates before the Ordinances of 1311, together with the king's authorization of these reforms. Though this material is not actually discussed in this chapter, or in the Introduction,¹⁴ nevertheless, it could not

¹⁰ Bishop Stubbs in his Introduction to the *Chronicles of Edward I and Edward II*, II, xliii. He says that there is little in the chronicle to suggest either that the author was connected with Malmesbury or that he was a monk. This document shows that the barons used the threat of deposition against Edward in 1311, significant of the extreme gravity of the situation. They also invoked the coronation oath.

¹¹ *Ibid.*, xxxi.

¹² They may possibly have been written by Andrew Horn, fishmonger of Bridge Street and Chamberlain of the City of London from about 1320, who died on 20 October 1328.

¹³ *Ibid.*, I, xix.

¹⁴ It is discussed in my *Studies*, Chapter IX.

be omitted, as it throws much light on the attitude of both the king and of the barons regarding the scope and nature of the baronial reforms. Document IV consists of part of the Ordinances of 1311, and Document V contains extracts from the lengthy Ordinances of 1318, which were true Household Ordinances, concerned with the "state" of the household, and not of the realm.

These five documents illustrate the main purpose of the Ordinances of 1311. As suggested by Stubbs, these seem to have been in line with thirteenth-century reforms. But whilst the Ordainers aimed at all that Stubbs suggested,¹⁵ they may also have aimed at some things which Stubbs did not suggest. One such thing was probably the extended use of parliament. Far from being indifferent to parliament, the magnates seem to have made the assembly the focus of their efforts. It is true that they did not lay stress on the presence or functions of the Commons; though the knights and burgesses were summoned to the parliament of August 1311, where the Ordinances were confirmed;¹⁶ and though the Ordainers probably believed that what touched all should be approved by all.¹⁷ The reason why the Commons received so little prominence was probably not only that the movement of reform was aristocratic in its origin, but—more important—that there was no tradition, in 1311, that high matters of state were normally the concern of the burgesses and knights.

¹⁵ Their demands are illustrated in Document IV below. They include the dismissal from Court of favourites, especially Peter Gaveston, the reaffirmation of Magna Carta, the strengthening of the peace, the cessation of illegal purveyances and of the seizure of goods for the king's use, the reformation of taxation and abolition of *prises* and *maltolts*, the re-establishment of the Exchequer as the controlling centre of finance, and the reform of the administration.

¹⁶ *Parl. Writs*, II, pt. ii, 44; T. F. Tout, *Place of Edward II*, 80. The fact that the Ordainers insisted on this assent being given in parliament suggests that they wanted it to be given in the presence of others as well as the barons.

¹⁷ The Monk of Malmesbury, in *Chronicles of Edward I and Edward II*, II, 170. Cf. *C.M.H.*, VII, 416: "by August 1311 they had their draft ready to submit to parliament, 'since,' as they remarked with an echo which may have been irritating, 'what touches all should be approved by all.'" It is a little difficult to see why the tag should have been irritating, even though the proposed reforms undoubtedly were. It seems likely that the thought behind the tag was becoming a commonplace by 1311.

Perhaps the fundamental corollary still deduced from the medieval tradition of government by consent was that direct consent had to be obtained, not from everybody, but from those whom the business concerned. In restricting some important matters to the barons, the Ordainers were not exercising any gift of foresight; but neither were they being simply selfish and reactionary. Like the barons of 1215, they were probably trying to set forth in their enactment the traditions and practices of their time.¹⁸ They were reflecting their times also in their concentration on administration and in their efforts to get suitable ministers appointed. But where they were truly original was in the use they made of parliament to carry out their reforms.

In the first place (Doc. IV) they insisted on the need for the assent of the barons in parliament for the waging of war (clause 9)¹⁹. This was an important extension of parliamentary government. It was part of the whittling away of the king's sole responsibility, the consequences of which have been suggested elsewhere. In the second place, damaging royal grants which were now annulled might not be made again without the consent of the barons in parliament (clause 7). In the third place, the Ordainers demanded the same parliamentary assent in the appointment of ministers (clause 14). This was perhaps the true beginning of a long-drawn-out effort to obtain some control in parliament over the bureaucracy. In the fourth place, they asked (clause 40) for the election, in each assembly, of a "committee" of parliament,²⁰ to hear

¹⁸ It has been argued that parliament was, to the Ordainers, "to be essentially a baronial assembly, meeting for the fulfilment of baronial aims"; J. C. Davies, *Baronial Opposition*, 512. Professor T. F. Tout gave careful and objective presentation of the facts; *Place of Edward II*, 80.

¹⁹ Some earls refused to attend Edward's summons to the Bannockburn campaign, on the grounds that the decision to make the campaign had not been taken in parliament. They were unwilling, they said, to offend against the Ordinances; Monk of Malmesbury, in *Chronicles of Edward I and Edward II*, II, 200-1. Thus, the clergy said in 1317, warfare overseas ought to be supported as being "common business"—*commune negotium*; *ibid.*, 225. For the observance of the Ordinances in this respect, in the same year, see *ibid.*, 228.

²⁰ This was composed of one bishop, two earls and two barons. It was, of course, not a committee of parliament in the later sense of the phrase.

complaints against ministerial contraventions of the Ordinances. This went beyond the old question of election of ministers. It was the first important attempt to bring the activities of the ministers, during their period of office, under the direct influence of parliament. This section was limited to infringements of the Ordinances; but nevertheless it opened up a wide vista of judicial actions against ministers. There was apparently no idea that parliament was a court, with a law and procedure of its own; but nevertheless it is perhaps just possible that we may discern here one more foreshadowing of such an idea. Closely connected with this was an attempt (clause 29) to regulate general judicial activities within the assembly.²¹ All these activities in parliament are by the Lords and not by the Commons; but the important thing is that the Ordainers insisted they be in parliament. They made the general assembly, with its growing tradition of the presence of the Commons as well as the king and magnates, the medium of some of their most important reforms.

Thus it is possible that the Ordinances of 1311, like their great prototype the Provisions of Oxford, had their greatest significance, not in relation to the system of household government, but in relation to the development of parliament. Though the Ordainers were not free from the limitations of a narrow class interest, they nevertheless attempted, not altogether unsuccessfully, to solve a national problem in national terms. They insisted that important aspects of politics, justice and administration should be dealt with in the general assembly. They could not solve the difficult constitutional problem presented by the growth of bureaucracy; but they were the first to make an attempt to establish a "national" control over the bureaucracy one of the main purposes of their reform; and

²¹ The assembly was to be held once or twice a year in a convenient place. The main reason was the settlement of pleas which had been delayed in the king's courts, because a party in the dispute had alleged that answer should not be made in the king's absence; and also because remedy for injuries committed by the king's ministers could only be obtained in common parliament. Points in Magna Carta and the Forest Charters which were doubtful were to be explained in the next parliament.

they were the first to find in parliament the main instrument of all their reforms. If their work proved not to be permanent, this was perhaps more on account of the antecedents of the Ordinance than of mistakes in the Ordinances themselves. In spite of their moderation in some matters,²² the Ordainers stood for, and acted upon, the revolutionary premises of 1308. It was perhaps chiefly because of this that, though the Ordinances had many good points and represented much effort, and although they had the support of a large part of the nation, they had no permanence. Sooner or later, Edward was likely to destroy them. Beyond them, he would probably be driven to attack all the baronial reforming platform since his accession to the throne. Thus, in the last analysis, the Ordinances were not so important, at any time, for what they said, as for what they represented. In spite of that, some of the reforming platform of the Ordainers was re-created in 1330, and some of their reforming ideas lasted far on into the century, to be revived and expanded in the reign of Richard II.

(c) *Documents*

- I. Edward sanctions the election of Ordainers in 1310, according to the Monk of Malmesbury.
- II. The action of the Ordainers according to the Canon of Bridlington.
- III. The Ordinances according to the *Annals of London*, including letters from the barons to the king and the preliminary Ordinances of 1310.
- IV. Ordinances of 1311, according to the *Statutes of the Realm*.
- V. Household Ordinances of 1318.

I. *Edward II sanctions the election of the Ordainers, 1310, according to the Monk of Malmesbury*

Then the earls and barons met together and came to the king to hear the cause of their summons to parliament. There was much

²² They seem to have tried to avoid Simon de Montfort's mistake of taking the government out of the hands of the king.

discussion, back and forth, amongst them, which did not become public. But when the council had been extended for many days, then, I have heard, at length there was a demand on the part of the barons. They said that the condition of the king and of the realm had sadly gone awry since the death of Edward his father, of good memory, to the great damage of the whole kingdom. They petitioned²³ that twelve discreet men should be elected, with the consent and assent of the king and of his barons. They should be men of good reputation and of power, by whose advice and decree the above condition should be reformed and strengthened. If anything was a fruitful source of injury to the realm, their ordinance should destroy it. If, in any case, it ought to have been provided for in the kingdom, by their discretion full measures should be taken about it.

The king deliberated about these things; but he long deferred their execution, because he suspected some aspects of them. Nevertheless, the barons unanimously and strongly insisted, alleging many things and threatening more. They finally ended with one voice on the following note that, unless the king conceded their demand, they would no longer hold him as their king, nor keep the fealty they had sworn him, especially since he himself would not keep the oath which he had sworn at his coronation, for both law and natural reason warn that faith will not be kept with him who does not himself keep faith.

When these and other things had been alleged, the king, having taken better counsel, saw that he was now in the midst of a crisis in which he could not, without danger and scandal, avoid the necessity of concession. He expressly conceded the elections and ordinances, and whatever they thought should be enacted for the common good of the kingdom, saving the royal honour; and he confirmed this, in writing, sealed with his seal.

—From the *Vita Edwardi Secundi Auctore Malmesberiensi*, in *Chronicles of Edward I and Edward II*, II, 163.

II. *Ordainers and Ordinances according to the Canon of Bridlington*

. . . thus, the magnates of the realm took note of the fact that the king indiscreetly made as his confidants foreigners and certain Englishmen, and that he also put these at the head of the leading offices of his household. There, puffed up by this, these confidants seized victuals, goods and different chattels throughout the country,

²³ *Petebant.*

paying neither the price nor the worth. Hence the magnates were strongly grieved and they decreed that they would bring remedy to the clamours of the oppressed.

And they approached the king, and reported to him the unjust and burdensome seizures of the goods of the people, humbly begging him to provide the best remedy he could for these injuries and oppressions of the people, and to bring aid compassionately to the complaining populace.

At length the king agreed to the prayers of the magnates and conceded that "they might elect certain discreet persons from the prelates earls and barons, who would enact and ordain to the honour of God and of holy church, to the profit of the king and the profit and peace of the kingdom and of the people, and would draw up in writing whatever agreed with right and was consonant with reason."

Then a time was fixed and precisely determined for the aforesaid elected ordainers, that is, from the 16 March 1310 until the next feast of St. Michael, and then from that feast until the next following, during which to enact, ordain and define all and singular matters which, as narrated above, could be enacted to the praise of God, and the profit and honour of holy church, of the king, of his household, of the realm, and of the people. . . .

—From the *Gesta Edwardi de Carnavan Auctore Bridlingtoniensi*, in *Chronicles of Edward I and Edward II*, II, 36-7.

III. *The Ordinances of 1310 and 1311 according to the Annals of London*

The king held his parliament at London, where there gathered the aforesaid prelates, earls and barons on 27 February; and they remained until 12 April, treating about an ordinance for, and the condition of, the whole land; and they presented to the king the following petition:

*The articles of the prelates, earls and barons*²⁴

They show our lord the king the great perils and damages which appear every day, which, if they are not quickly redressed, will bring destruction of the liberties of holy church, and disinheritation and dishonour to you and to your royal power, and disinheritation of your crown and loss to all in your realm, rich and poor. Neither you nor the good people of your land can at all escape these dangers

²⁴ In French.

and losses, unless more speedy remedy is provided by the counsel of the prelates earls and barons, and of the wiser men of your realm.

In the first place, though you are ruler of the land and therefore sworn to keep the peace in your land, you are guided by bad and unsuitable counsel; so that you are put and held in great slander in all lands.²⁵ You are so poor and drained of all kinds of wealth that you have not the means of defending your land or maintaining your household, except by the extortions which your ministers make of the goods of holy church and of your poor people, without payment, against the form of the great charter, which charter they beg to be observed and maintained in force.

Also, sire, they show you that whereas the community of your realm gave you a twentieth of their goods in aid of your Scottish war, and a twenty-fifth to be freed from prises and other grievances, these taxes have been entirely²⁶ levied and have been spent and used up²⁷ with unfitting counsel. Your war has been in no way advanced, and your poor people in no way relieved of the prises and other grievances, but are daily more grieved than before.

Wherefore, sire, your aforesaid good people pray you humbly, for your own salvation and that of them and of the crown, which they are bound to maintain by their allegiance, that you will assent to their request, so that these dangers and others can be removed and redressed by ordinance of your baronage.

Upon which the king conceded that some of them might treat concerning the advantage and condition of the realm in the following manner:

*The King's Charter*²⁸

Edward by the grace of God king of England, lord of Ireland and duke of Aquitaine, to all who see or hear these letters, greeting. We have granted to the prelates earls and barons of our land, to the honour of God and for our good and that of our realm, and of our free will, that they can elect certain persons from amongst the prelates earls and barons, and from others, whom it shall seem fit to summon to them during the time of their power, that is to say, from the feast of St. Michael next to the same feast a year later, to ordain and establish the condition of our realm and of our household, according to right and reason.

²⁵ "Vous estes par noun covenable consail et malveis issint menee, qe vous estes mys en cheyn en grant esclaundre en totez terres."

²⁶ *Touz le plus leves.*

²⁷ *Degastiez.*

²⁸ In French.

To those who should be elected by the said prelates, earls and barons, whoever they are, we grant, by these letters, full power to ordain concerning the condition of our realm and of our aforesaid household. They are to ordain in such manner that the ordinances shall be to the honour of God, to the honour and profit of the holy church, to our honour and profit, and to the profit of our people, according to right and reason and the oath which we took at our coronation.

And we wish that those elected and all those who are of our lordship and our allegiance shall hold and keep at all points the ordinances which shall be made by the prelates earls and barons elected for this purpose, and by others summoned to them. And that they may bind each other and swear mutual oaths to this end without challenge by us or ours. . . .

In witness of which, we have caused these letters patent to be made. Given at Westminster 15 March, 1310.

Letters written by the barons to the king

To²⁹ all those who see or hear these letters, Robert by Divine sufferance archbishop of Canterbury, [etc],³⁰ greetings in God.

Our very dear lord Edward by the grace of God king of England lord of Ireland and duke of Aquitaine has granted of his free will, for the honour of God and the good of the said king and of his realm to us and to other prelates earls and barons of the said realm, that we can elect certain persons from amongst ourselves and others, those whom it seems proper to summon to us during the period of our power, . . .

. . . to ordain and establish the estate of the household of the king, according to right and reason. Those who may be elected, whoever they may be, shall have full power to ordain concerning the state of the king's household and of his aforesaid realm, in such manner that

²⁹ In French.

³⁰ Ralph bishop of London, John bishop of Lincoln, Simon bishop of Salisbury, Henry bishop of Winchester, John bishop of Norwich, John bishop of Bath and Wells, John bishop of Chichester, Walter bishop of Worcester, Walter bishop of Exeter, David bishop of St. David's, by the same sufferance, Gilbert of Clare earl of Gloucester and Hertford, Thomas earl of Lancaster, Henry of Lacy earl of Lincoln and of Salisbury, Humphrey of Bohun earl of Hereford and of Essex, John of Brittany earl of Richmond, Aymer of Valence earl of Pembroke, Guy of Beauchamp earl of Warwick, Edmund earl of Arundel; Henry of Lancaster, Henry of Percy, Hugh of Vere, Robert of Clifford, Robert Fitz Pain, William Marshal, John Lovel, Ralf Fitz William, Payn Tiptoft, John of Buttetourt, Bartholomew of Badlesmere, John of Grey, John of Crombwell.

the ordinances are made to the honour of God and to the honour and profit of the holy church and to the honour of the said king; also to his profit and the profit of his people, according to right and reason and according to the oath which the king took at his coronation. . . .

We [therefore] grant, for ourselves and our successors and our heirs, that the concession which the king has made us in the above manner shall not be regarded as a custom or precedent, nor shall be used to anybody's prejudice against right and reason; that the above concession can only be understood and claimed³¹ as properly³² coming by his courtesy and free will; and that the power of the ordainers to make the ordinances shall not last beyond the term set out above. In witness of which thing we have placed our seals on these letters patent. Given at London 17 March 1310.

Then the magnates of the realm elected from among themselves one archbishop and six suffragan bishops eight earls and five barons as follows, namely: [here are listed the names of the Ordainers] who, having God before their eyes, ordained firstly the following Ordinances for the condition of the realm, for this matter demanded speedy help.

Ordinances of the bishops and earls

To the honour of God it is ordained,

I. That holy church shall have all her liberties just as she was wont to have them.

II. Also it is ordained that the king's peace be firmly kept by all the realm . . . and that the people elected and assigned by the king and by the commonalty of the realm to ordain for the king's household and the realm's condition shall remain in the city of London to ordain and treat concerning these things. They can more conveniently remain there than elsewhere, for a number of reasons. There, they can more quickly consult the records of the chancery and of the exchequer and other records. . . .

III. Further, it is ordained, in order to pay the king's debts and improve³³ and more honourably maintain his condition, that no gift of land, nor of rent nor of franchise nor of escheat, nor of guard nor of marriage nor of office, shall be made to any of the said ordainers during their period of office, nor to any other, without the advice and assent of the said ordainers or of the majority of them,

³¹ *Cleyne*.

³² *Proprement*.

³³ *Relever*.

or of at least six of them. All things from which profit can be derived shall be seized for the king's advantage, so that his condition may be improved in future; and other matters shall be ordained with reference to this, to the honour and profit of the king.

IV. Further, it is ordained that all the alien merchants who have received the profits of the customs of the realm, or of other things pertaining to the king, since the death of Edward father of the present king, shall be arrested, with all their possessions, wherever they are found, within the power of the king of England, until they shall have rendered a reasonable account of how much they have received from the issues of the realm within the period aforementioned, before the treasurer and the barons of the exchequer and others added to these by the ordainers.

VI. Further, it is ordained that the great charter shall be kept at all points, in such a way that, if there is any obscure or doubtful point in the said charter, it shall be explained by the said ordainers and others whom they shall wish to call to them for this purpose, at whatever time they shall see fit, during their period of power. Given at the house of the Carmelite friars 19 March.

—From the *Annales Londonienses*, in the *Chronicles of Edward I and Edward II*, I, 167-73.

IV. *Ordinances of 1311, according to the Statutes of the Realm*

... Through bad and deceitful counsel, our lord the king and all his men have everywhere been dishonoured and his crown in many ways has been debased and ruined; his lands of Gascony, Ireland, and Scotland are on the point of being lost, unless God improves the situation; and his realm of England has been brought to the verge of rebellion through prises and [other] oppressive and destructive measures. These facts are known and proved. [Therefore] our lord the king, of his free will, has granted to the prelates, earls, and barons, and to the other good men of his realm, that certain persons shall be elected to ordain and determine the conditions of his household and of his realm, as appears more fully in the commission issued by our lord the king in this connection. Therefore, we, Robert, by the grace of God archbishop of Canterbury and primate of all England, and the bishops, earls, and barons elected by virtue of the said commission, do ordain for the honour of God and holy church and of the king and his realm in the manner following:

1. In the first place it is ordained that holy church shall have all its liberties as heretofore and as it should have them.

2. Also, it is ordained that the king's peace shall be firmly kept throughout the entire kingdom; so that every one may safely go, come, and remain according to the law and custom of the realm.

3. Also, it is ordained that, in order to acquit the king's debts, to relieve his estate, and the more honourably to maintain it, no gift of land, rent, liberty, escheat, wardship, marriage, or office shall be made to any of the said Ordainers during their [tenure of] power under the said ordinance, or to any other person, without the counsel and assent of the said Ordainers or the majority of them—or of six of them at least—; but that all sources of profit shall be improved for the benefit of the king, until his estate is properly relieved and some other ordinance may be made for the honour and profit of the king.

4. Also, it is ordained that the customs of the kingdom shall be received and kept by men of the kingdom itself, and not by aliens; and that the issues and profits pertaining to the kingdom, from any source whatsoever, shall in their entirety come to the king's exchequer, to be paid by the treasurer and the chamberlains for maintaining the king's household, and [to be spent] in other ways for his benefit; so that the king may live of his own, without taking prises other than those anciently due and accustomed. And all others shall cease. . . .

6. Also, it is ordained that the Great Charter shall be observed in all its particulars; so that, if there is any point in the said charter that is doubtful or obscure, it shall be interpreted by the said Ordainers and other men whom they may see fit to call upon for that purpose. . . .

7. And besides, since the crown has been so abased and ruined by numerous grants, we ordain that all grants made to the damage of the king and impoverishment of the crown since the commission was given to us . . . shall be annulled; and we do annul them entirely, so that they shall not be given back to the same persons without the common assent [of the baronage] in parliament. . . .

9. Whereas the king, on account of the many perils that he and his kingdom may incur, ought not to undertake an act of war against any one, or to go out of the kingdom, without the common assent of his baronage, we ordain that henceforth the king shall neither go out of the kingdom nor undertake an act of war against

any one, without the common assent of his baronage, and that in parliament. . . .

10. And whereas it is feared that the people of the land will rebel on account of the prises and divers oppressions recently established, . . . we ordain that henceforth all prises shall be abolished except the ancient and lawful prises due to the king and to others who are lawfully entitled to them. And if any prises are taken contrary to the ordinance aforesaid by any one whomsoever, no matter of what condition he may be . . . pursuit with hue and cry shall be raised against him and he shall be taken to the nearest gaol of the king, and the common law shall be enforced against him as against a robber or thief, should he be convicted of such [wrongdoing].

11. Also, [whereas] new customs have been levied and the old [customs] have been increased upon wool, cloth, wines, and other things—whereby [our] merchants come more rarely and bring fewer goods into the country, while alien merchants reside longer than they used to, and by such residence things become dearer than they used to be, to the damage of the king and his people—we ordain that all manner of customs and maltotes levied since the coronation of King Edward, son of King Henry, are to be entirely removed and utterly abolished forever, notwithstanding the charter which the said King Edward granted to alien merchants, because it was issued contrary to the Great Charter and contrary to the liberty of the city of London and without the assent of the baronage. . . .

13. And whereas the king, as aforesaid, has been badly advised and guided by evil councillors, we ordain that all the evil councillors shall be put out and utterly removed, so that neither they nor other such persons shall be near him or shall be retained in any office under the king; and that other persons who are fit shall be put in their places. And the same shall be done in the case of domestics, officials, and other men in the king's household who are not fit.

14. And whereas many evils have been incurred through [the employment of] such councillors and such ministers, we ordain that the king shall appoint the chancellor, the chief justices of both benches, the treasurer, the chancellor and the chief baron of the exchequer, the steward of the household, the keeper of the wardrobe, the comptroller and a fit clerk to keep the privy seal, a chief keeper of the forests on this side of Trent and one on the other side of Trent, also an escheator on this side of Trent and one on the other side, as well as the king's chief clerk of the common bench, by

the counsel and assent of the baronage, and that in parliament. And if by some chance it may happen that there is need to appoint any of the said ministers before parliament meets, then the king shall make such appointments by the good counsel [of those] whom he shall have near him up to the time of the parliament. And so let it be done henceforth with regard to such ministers, whenever there is need.

15. Also, we ordain that the chief wardens of ports and of castles on the sea shall be appointed and installed in the aforesaid manner, and that such wardens are to be of the land itself. . . .

17. Moreover, we ordain that sheriffs shall henceforth be appointed by the chancellor, the treasurer, and others of the council who are present; and if the chancellor is not present, let them be appointed by the treasurer, and the barons of the exchequer, and the justices of the bench. . . .

20. It is evident,³⁴ and found by the examination of the prelates, earls, barons, knights and of other good and lawful men of the realm, that Peter Gaveston has guided the king ill. He has badly advised the lord king, and has . . . led him to do evil. . . . He has taken for himself all the treasure of the king, which he has exported outside the kingdom. He has drawn to him men who would stand by him against all the people. By means of the king's treasure which he had acquired, he has had dominion over the condition³⁵ of the king and of the Crown, to the destruction of the king and of the realm. . . .

Wherefore . . . we ordainers . . . by virtue of the said royal commission, have agreed³⁶ that Peter Gaveston be entirely ejected and exiled from the realm . . . for ever and without return. [He must leave before the feast of All Saints. If he fails, he is to be regarded as a public enemy.]

26. Also, whereas the people feel much aggrieved because stewards and marshals hold many pleas that do not pertain to their offices, and also because they will not receive attorneys for defendants as well as for the plaintiffs, we ordain that henceforth they shall receive attorneys for defendants, as well as for plaintiffs, and they shall hold no pleas of freehold, debt, covenant, or contract, nor any common plea touching men of the people . . . saving [to their jurisdiction] only trespasses of the household itself and other trespasses

³⁴ *Notum* in Malmesbury (II, 172).

³⁶ *Concessimus* (II, 173).

³⁵ *Status*, in *ibid.*

committed within the verge, and contracts and covenants which any one of the king's household itself make with another of the same household, within the household itself and not elsewhere. . . .

29. Whereas in the king's court persons find their cases delayed because a party alleges that in the king's absence answer should not be made to demands, and [whereas] many persons wrongfully suffer injuries from the king's ministers, with regard to which injuries one can secure recovery only in common parliament; we ordain that the king shall hold a parliament once a year, or twice if need be, and that in a convenient place. And [we ordain] that, in those parliaments, pleas which are delayed in the said manner, and pleas wherein the justices are of different opinions, shall be recorded and settled. And likewise those bills which are brought to parliament shall be settled as heretofore in accordance with law and right.

32. Whereas, to the great injury of the people, the law of the land and common right have often been delayed by letters issued under the king's privy seal, we ordain that henceforth neither the law of the land nor common right shall be delayed or disturbed by letters under the said seal. And if, through such letters issued under the privy seal contrary to right or to the law of the land, anything is done in any session of the court of our lord the king, it shall be of no avail and shall be held as null. . . .

38. Also, we ordain that the Great Charter of Liberties and the Forest Charter issued by King Henry, son of King John, shall be observed in all their particulars, and that points in the said charters of liberties which are doubtful shall be explained in the next parliament after this, by the advice of the baronage, the justices, and other persons learned in the laws. And this is to be done because we are unable to attend to the matter during our term [of office].

39. Also, we ordain that the chancellor, the treasurer, the chief justices of both benches, the chancellor of the exchequer, the treasurer of the wardrobe, the steward of the king's household, and all justices, sheriffs, escheators, constables, investigators [named] for any cause whatsoever, and all other bailiffs and ministers of the king, whenever they receive their offices and bailiwicks, shall be sworn to keep and observe all the ordinances made by the prelates, earls and barons for that purpose elected and assigned . . . [to maintain] every one of those [ordinances] without contravening them in any particular.

40. Also, we ordain that, in each parliament, one bishop, two earls, and two barons shall be assigned, to hear and determine all complaints of those wishing to complain of the king's ministers, whichever they may be, who have contravened the ordinances aforesaid. And if the said bishop, earls, and barons cannot all attend, or are prevented from hearing and determining the said complaints, then two or three of them shall do so. And those who are found to have contravened the said ordinances, in the interest of the king and in the interest of the plaintiffs, shall be punished at the discretion of the persons thus assigned.

41. Also, we ordain that the aforesaid ordinances are to be maintained and observed in all their particulars, and that our lord the king shall cause them to be issued under his great seal and sent into every county of England, to be published, held, and strictly kept as well within franchises as without. . . .

These ordinances, having been shown to us and published on the Monday before the feast of St. Michael just past, we agree to, accept and confirm. And we will and grant, for us and our heirs, that all and several of the said ordinances, made according to the form of our letters aforesaid, shall be published throughout our entire realm, henceforth to be strictly maintained and observed. In testimony whereof we have caused these our letters patent to be drawn up.

Given at London, October 5, in the fifth year of our reign.

—From the *Statutes of the Realm*, I, 157.

V. *Household Ordinances of 1318*

. . . The king should have a fit steward of the household, who, if he is a banneret, is to have a knight, three squires, and a clerk for the pleas that pertain to the stewardship, [all of them] eating in the hall. And each night he shall receive for his chamber a sester of wine, twelve candles, two large candles, and one torch, and more when he needs them. And [he is to have] bedding for the whole year and wood for the winter season—from the eve of All Saints to the eve of Easter—[to be obtained] from the usher of the hall. And [he is to have] a livery for his chamberlain; namely, a portion of bread, a gallon of ale, and a general serving from the kitchen. And [he is to have] dinners and suppers when he wants them; and as fees 20m. a year, in equal instalments on the feasts of Christmas and Pentecost. And if he is a simple knight, he shall receive fees and robes like the

other simple knights of the household, and shall have two squires and his clerk eating in the hall.

A treasurer of the wardrobe, who is to have a chaplain, a clerk, and two squires eating in the hall. . . .

A chamberlain, who, if he is a banneret, is to have a knight and three squires eating in the hall. . . .

Also, a comptroller, who is to keep a counter-roll, against the treasurer of the wardrobe, for all receipts and issues pertaining to the same wardrobe; and he is to witness them in the exchequer, in connection with the account of the said treasurer. And he shall attend the receipt of wines in gross and shall supervise all the offices of the household, such as the pantry, butlery, cellar, larder, spicery, dispensary of oats and other offices, [to see] that the wines and victuals that he finds in the said offices are good and suitable for dispensing in the said household. . . . And he is to go into those same offices every Monday to examine the remainders [of supplies] and to see that they, with the amounts dispensed in the past week, agree with the receipts of the aforesaid week. And he shall be in the kitchen for the cutting of meat and the division of fish. . . . And every day, if he sees reasonable cause, he shall be present at the account, together with the steward and the treasurer. And this same comptroller of the wardrobe is to have a clerk and a squire eating in the hall. . . .

—Printed by T. F. Tout, *Place of Edward II in English History*, 244-84.

Chapter III

THE STATUTE OF YORK, 1322

(a) *Some Recent Works*

CLARKE, M. V. *Medieval Representation and Consent* (London, 1936).

HASKINS, G. L. *The Statute of York and the Interest of the Commons* (Cambridge, Mass., 1935).

"A Draft of the Statute of York," in *E.H.R.*, LII (January 1937), 74-7.

"The Doncaster Petitions, 1321," in *ibid.*, LIII (July 1938), 478-85.

KEENEY, B. C. *Judgment by Peers* (Cambridge, Mass., 1949).

LAPSLEY, G. "The Interpretation of the Statute of York, 1322," in *E.H.R.*, LVI (January, July 1941), 22-51, 411-46.

"The Commons and the Statute of York," in *ibid.*, XXVIII, 118.

STRAYER, J. R. "Statute of York and Community of the Realm," in *Amer. Hist. Rev.*, XLVII (October 1941), 1-23.

WILKINSON, B. "The Coronation Oath of Edward II and the Statute of York," in *Speculum*, XIX (October 1944), 445-70.

"The Sherburn Indenture and the Attack on the Despensers, 1321," in *E.H.R.*, LXIII (January 1948), 1-28.

"The Negotiations Preceding the 'Treaty' of Leake in August 1318," in *Studies in Medieval History Presented to F. M. Powicke* (Oxford, 1947), 333-53.

(b) *Introduction to the Documents*

THE Statute of York was the royalist counterpart to the Ordinances of 1311. Its importance is not in question;¹ more has been written about it than about any other enactment of this period; but historians are still far from agreement as to

¹ But see a contrary view, p. 139 below.

what it decreed. It is translated below (Doc. V), with one or two other documents which help us to understand it.

Document I is an abbreviation of a letter written by Thomas of Lancaster to Edward II in 1317. It gives one or two of Thomas' ideas, about which we know very little. Documents II and III illustrate the revolt of the Marcher magnates, supported by Thomas of Lancaster, which preceded the statute. The first is a description of one of their meetings at Sherburn in 1321. It was written at Westminster by Robert of Reading, a good chronicler who, in the opinion of Luard,² wrote independently of all other writers of the time. According to Mr. Luard, the chronicler was strongly opposed to Gaveston and strongly in favour of Thomas of Lancaster. What is more to our purpose, he may have had some contact with the Marcher Lords. The second of these documents is an account of the meeting at Sherburn, by the Canon of Bridlington, whom we have met before. At this meeting, Thomas of Lancaster probably failed to carry with him the barons and prelates of the North. The Canon describes this failure, and gives a glimpse of the aims of the barons and of the principles upon which they took their stand. He also gives a copy (Doc. IV) of the indictment against the Despensers, which is different from the official record enrolled on the Close Rolls. This copy throws light on the use made by the opposition of the famous Declaration of 1308.

The Statute of York itself (Doc. V) is so brief that part of it may be given at once. First of all, it annulled the Ordinances of 1311. Then it continued: "And henceforth and forever at all times, every kind of ordinance or provision made under any authority or commission whatever, by subjects of our lord the king or of his heirs, relative to the power of our lord the king or of his heirs, or contrary to the estate of the lord king or of his heirs or against the estate of the crown, shall be null and shall have no validity or force whatever; but the matters which are to be determined for the estate of the king and of his heirs, and

² Introduction, *Flores Historiarum* (R.S., 1890), III, xvii.

for the estate of the kingdom and of the people, shall be considered, granted and established in parliament, by our lord the king and with the consent of the prelates earls and barons and of the community of the kingdom, as has been accustomed in times past . . .”

To Stubbs, the statute was simply the royal reply to the Ordinances of 1311. Its essential purpose was the repeal of the baronial reforms which had been unconstitutionally forced upon the king. It did, however, concede that all legislation should in future be by consent of prelates, earls, barons and commons, in parliament. Mr. Lapsley (at one time) and Professor Tout suggested that the concession did not extend to all legislation, but only to fundamental changes in the constitution, like those of 1311.³ Professor McIlwain and Mr. Haskins preferred to think that it extended only to fiscal changes. These were to be agreed to by magnates and “commonalty.” Some modern writers do not translate the last term, as Stubbs did, by the word “Commons.” They believe that Edward had no intention in 1322, at a moment of victory, of making his legislation more “democratic.” Others, again, have found this question relatively unimportant. It is clear that there are still great differences of opinion between historians as to the significance of this brief statute.

To understand this significance, we should probably begin with the revolt of 1321.⁴ This revolt witnessed a revival of the Declaration of 1308, and of the procedure, based on this Declaration, which had been used against Peter Gaveston. Once more, the magnates condemned the king’s “favourite” in their own assembly, because they could not rely on justice in the king’s court. They used parliament to give its legislative sanction to the “award.” This important fact has been obscured in the past, partly because the form of the earlier

³ A good many of the modern views are given by J. C. Davis, *Baronial Opposition*, 514; and by Lapsley, in the article cited above, p. 26. I regret that I am unable, for reasons of space, to give an adequate discussion of all these modern views.

⁴ The Ordinances of 1311, another origin of the Statute, have been discussed in Chapter II above.

procedure against Gaveston was not known;⁵ but, more particularly, because there was a sharp conflict of evidence between the Canon of Bridlington and the official record. According to the former, the Declaration provided the main principle of baronial action; according to the latter, it was something which the magnates unreservedly condemned. In face of such a conflict historians were bound, by the canons of historical criticism, to accept the record as being authentic, and to discount the Canon of Bridlington's version, even though it looks, on the face of it, more reasonable than that of the official record.

Recently, however, other manuscript versions of the Indictment have been discovered,⁶ and they agree, in this particular, not with the Close Rolls but with the Canon. As a consequence, it seems as if we shall have to revise our opinion and accept the chronicle version of the Indictment as being equal in authenticity with the record. Thus, we have two different forms of the Indictment of the Despensers. The most probable explanation of their existence seems to be that the Marcher Lords at first took their stand on the Declaration of 1308, but that they later repudiated it by including it in the Indictment of the Despensers. We are still, however, confronted by a very great mystery. This is the problem of explaining why the magnates, in the end, repudiated and condemned the very principle of opposition on which they had originally taken their stand.

To explain this, we seem to be driven to a very remarkable and questionable theory. It is that the magnates were compelled, by the weaknesses of their movement, to jettison either the Declaration of 1308 or the exile of the Despensers, and that they sacrificed the former. This is a very hazardous speculation; but there seems to be no escape from it, if the facts are as they have been suggested above. It involves a complete

⁵ It was first used by H. G. Richardson in the "Coronation Oath" cited above (p. 67), but Mr. Richardson does not make any comment on the procedure adopted against Gaveston.

⁶ See my article, "The Sherburn Indenture," listed above.

readjustment of views regarding the strength of the movement of 1321. This, in turn, leads to a reconsideration of the famous Indenture of Sherburn, which was thought to have been sealed by a great coalition of magnates, Marchers and Northerners, along with Thomas of Lancaster, at Sherburn in Elmet, preparatory to the revolt. It thus, historians believed, united most of the magnates in England against the ruler. The existence of such a coalition makes it very difficult to believe that the opposition magnates can have been compelled to change their minds completely about such an important matter as the Declaration of 1308.

In point of fact there are what seem to be reasonable grounds for believing that this Indenture, representing an apparently overwhelming coalition, was never actually sealed. The Marcher Lords, Thomas and the Northerners did, indeed, gather at Sherburn in June 1321, previous to the advance against Edward at Westminster; but there were probably at least two crucial meetings there, by different magnates and with different results. One was between Lancaster, three Northern prelates and the Marchers (Doc. II). It ended in agreement to seek the presence of the king and "persuade" him to grant the exile of the Despensers. The other was between Lancaster and the Northerners (Doc. IV). It was called by Thomas of Lancaster as the sequel to a smaller meeting of secular lords at Pontefract on 24 May, where Thomas had obtained a defensive alliance, but not the offensive alliance he now sought in the Sherburn Indenture. The lay magnates at Pontefract had suggested that Thomas should consult the Northern prelates. Thomas did so, at Sherburn; and there the prelates recommended only that the troubles in the realm be settled "by peaceful deliberation in Christ." There are other reasons which make us suspect that the Northern magnates were unwilling to seal the Indenture. On the whole, it seems likely that, in this assembly at Sherburn, the Northerners refused to co-operate with the Marchers and refused to set their seals on an indenture which had been prepared. The opposition to Edward in 1321, far from being national, as has

generally been assumed, consisted of little more than Thomas of Lancaster and the Marcher lords.

Thus the details of the revolt of 1321 seem to account for the fact that the Marchers, in order to obtain their main demand for the exile of the Despensers, had to give up the Declaration of 1308. Nevertheless, the use which the rebels made of the Declaration, and their fidelity to the ideas of the first opposition to Edward, explain why the royalists, in their turn, directed the statute of 1322 against all the baronial methods and principles of opposition since the coronation oath.

If this view is correct, the Statute of York is a document of the very greatest constitutional importance, and was intended by its authors to be so. Indeed, though modern historians have differed about everything else,⁷ they were almost unanimous on this point, until Mr. Richardson made their disagreement complete by questioning whether even this preliminary assumption was true. He implied that the statute had been given a meaning, of which its authors never dreamed, by a process of forensic ingenuity and judicial interpretation. What the statute was intended to do, he suggested, was merely to annul the Ordinances of 1311. An attempt to see the statute as a legislative monument of outstanding importance puts those who make it, he believed, in an unhappy position.

The first argument in favour of this view is the fact that the instructions which Edward sent to the draftsmen of the statute simply directed them to repeal the Ordinances, and at the same time to put the good points of the Ordinances into a statute.⁸ The second is that the writ to the sheriffs commanding the publication of the statute did no more than repeat these two directions. There is, Mr. Richardson argues, not the slightest suggestion that the statute goes beyond these commands. In the third place, there is no evidence that the statute was

⁷ Very fine work has been done on this statute by the historians cited above. The only reason for concentrating on Mr. Richardson's views ("The English Coronation Oath," 72-3) is that they tend to question the whole importance of the Statute.

⁸ This is what I assume Mr. Richardson's interpretation to be (*ibid.*, 71). He does not state it explicitly.

regarded as of permanent value by contemporary lawyers. Fourthly, those who regard the statute as defining the process of legislation and the constitution of parliament are forced to attach an arbitrary meaning to "commonalty," namely, representative knights and burgesses summoned to parliament. Finally, the process of legislation which seems to be laid down in the statute, whereby the king considers, accords and establishes measures, and the prelates, earls, barons and commonalty assent to them, is impossible to reconcile with the process of legislation under Edward III.⁹

Perhaps these arguments are open to one or two objections, however. In the first place, the direction to the council¹⁰ does not necessarily give us the whole content of the statute which the king wanted. Regarding the Statute on the Repeal of the Ordinances, the memorandum said, let the good points be put in a statute. It seems dangerous to argue about the contents of the Statute of York from a brief memorandum such as this. In the second place, the instructions to the sheriffs should not, perhaps, be regarded as conclusive. They explained that the purpose of the Statute of York was to annul the Ordinances; but they did not necessarily indicate all that the statute accomplished. They may only have indicated all that the king wanted to be explained before the counties. There were good and obvious reasons why Edward would wish to concentrate on the repeal of the Ordinances, the prime purpose of the statute, and the one which was of immediate importance to the men of the shires; but this does not mean that there were no other significant matters. One elementary precaution in attempting to discover whether or not there were, is to look at the actual wording of the statute. We must attach great importance to the contemporary explanations; but in the last

⁹ Or rather, on this last point, we had better have Mr. Richardson's own words: "To regard this process as a precedent for the predominant and characteristic legislative process under Edward III—that of basing Statutes upon a common petition—seems not only paradoxical but frankly impossible." (*Ibid.*, 73.) Mr. Richardson also cites examples of enactments by Edward II and Edward III without assent of the Commons.

¹⁰ Printed in full by J. C. Davies, *Baronial Opposition*, 582-3.

analysis we must interpret these in the light of the contents of the statute itself. If we do this, we may perhaps venture to conclude that the instructions to the sheriffs do not give us all the contents of the statute. The annulment of the Ordinances was accomplished in the first paragraphs. Nothing else was necessary if this annulment was all that Edward required. Nevertheless there was another paragraph, dealing with a different though related matter. This was nothing less than the nature of future legislation, something fundamental in any state. To argue that this was unimportant seems, at least to a constitutional historian, to be unwise. The only other obvious conclusion seems to be that it was an important issue, but one which Edward II was not anxious to have explained in detail before the men of the shires. Knowing the nature of the new definition of legislation contained in the statute, this need occasion no surprise.¹¹

With regard to the third point, that the statute was not regarded as important by contemporaries, it has to be remembered that what contemporaries thought about it is not altogether clear. The royal ascendancy set up in 1322 only lasted until December 1326. After that, extreme royalist statutes were not likely to be in great favour for a while. What happened, in 1326 and 1330, to the various enactments of Edward II's reign still awaits investigation. Until this has been done, it may be wise to suspend judgement as to what the silence of lawyers really meant.¹²

Finally, we may perhaps venture to argue, the significance of the Statute of York remains very great, however we interpret the word "commonalty." The principles governing legislation laid down would remain the same whether the assent to legis-

¹¹ Mr. Richardson states that he will not be wiser than the clerk who sent out the instructions to the sheriffs; but perhaps he places an undue restriction on his constitutional interests. In any case, it may well be that the clerk himself was very much wiser, as regards the significance of the statute, than his letter. After all, he was probably only obeying orders; and his orders, in this matter, were probably determined by political strategy. It is the constitutionalist's duty to get beneath such strategy, to the true issues which the strategy sometimes obscured.

¹² Some comments are offered in Chapter IV below.

lation in parliament was by Lords and Commons or only by the Lords. That the procedure laid down—enactment by king, assent by Lords and commonalty—was incompatible with the practice of common petition under Edward III seems to be questionable. Common petitions under the third Edward were only a request by the Commons, or part of them, for a statute; the statute had still to be conceded by the king. The form of legislation was enactment by the ruler, assent by Lords and Commons. If it is urged that this was an evasion of the spirit, if not the letter, of the statute of 1322, this point may be freely conceded. It is, indeed, suggested below that some such an evasion was a probable consequence of the revolt of 1326, which made it unlikely that all the principles of the statute could be maintained.

Thus there seems to be no conclusive reason why we should not regard the Statute of York as being of great constitutional importance. We may, indeed, go further and suggest that it had no limited application, but was the royalist answer to the whole reforming movement since 1308. The main reasons for this are firstly its wording, which will be discussed in a moment; secondly a consideration of the political situation in 1322. In that year Edward II, for the first time since his accession, held almost undisputed power. He had crushed the most formidable of his opponents after a challenge which was, indeed, directed immediately against the Despensers, but which was based on ideas which had inspired the opposition ever since his accession to the throne. If these ideas were as radical as has been suggested in earlier chapters, Edward could never be secure in his triumph until he had succeeded in destroying the force of these as he had destroyed their proponents. It is entirely logical to expect that he would attempt to do this, in the Statute of York and other cognate enactments of 1322.

The main features of the reforming programme before this date, suggested above, may be briefly recapitulated. They were, firstly, the claim of the magnates that they had a right to impose ordinances and "awards" on the ruler; secondly, the use of parliament as the place for political trials, with judgement

by the Lords and the approval of the "people"; thirdly, a distinction between the Crown and the person of the ruler, with a duty of the magnates to the former which might entail resistance to the king; and fourthly, though the details of this are still very obscure, an appeal (as in the Declaration of 1308) to the "people" in opposition to the king, leading to a new concept of the community of the realm. Not all these aims had been clearly articulated, and not all could be simply rejected by the royalists; but it is likely that a royalist definition of parliamentary procedure would safeguard the ruler against all of them, to a greater or lesser degree.

It is possible to see an answer to all these baronial concepts in the Statute of York. The fact that this could be accomplished in one short paragraph need not unduly surprise us.¹³ Medieval legislators could be astonishingly sparing of words. The first claim of the magnates, it may be argued, was largely disposed of by the prohibition of "every kind of ordinance or provision made under any authority or commission whatsoever," by subjects of the king, "relative to the royal power . . . or contrary to the estate of the king or . . . of the crown." The second claim did not need to be dealt with in the Statute of York, because it had already been rejected by legislation which annulled the process against the Despensers,¹⁴ and by the trial of Thomas of Lancaster.¹⁵ These two acts, between them, gave effect to royalist views that judgement of peers in parliament was not obligatory; if conceded it was to be made only by the peers, and was to be begun by petition. The power to administer justice, even in political trials, belonged only to the king. Great lords could be judged by the king, and condemned by the king's record, with no reply permitted, with the magnates only assisting at the trial.

¹³ In point of fact, it was also accomplished in three other important acts: firstly the trial of Thomas of Lancaster in the king's court and not in parliament; secondly the revocation of the process against the Despensers of 1321; thirdly the revocation of the pardon to the rebels of 1321.

¹⁴ L. W. V. Harcourt, *His Grace the Steward and Trial of Peers* (London, 1907), 324-6.

¹⁵ *Ibid.*, 322-3; *Foedera*, II, 478-9; Trokelowe, *Annales*, ed. H. T. Riley (R.S., 1886), 112-24.

The third concept, distinguishing between the king and the Crown and justifying violent opposition, was rejected by identifying the interests of the king and the Crown, and by implication denying the claim of the barons made in 1308, to be the special protectors of the latter. Similarly, the idea that the magnates had a special duty of protecting the interests of the "people" was rejected. Matters affecting the "people," as well as those affecting the king and the kingdom, were the common concern of everybody, to be disposed of in parliament, by the king, with only consent required from the prelates, earls and barons and the community of the kingdom.¹⁶ The contribution of the last group to parliament will be discussed very briefly below.

These suggestions do not exhaust the problem of the wording of this remarkable statute or of its intentions.¹⁷ They are enough, perhaps, to justify the conclusion in the Introduction that the wording of the statute must be interpreted in the light of all the conflict between the king and the barons since 1308. Its purpose was to reduce the newer pretensions of both Lords and Commons¹⁸ in favour of the older concept of personal monarchy. Incidentally, it reflected a growing struggle over the nature of the parliamentary assembly caused in no small measure, perhaps, by its rapid integration into a trinity of King, Lords and Commons, with consequent friction as to the proper relations between its respective parts.

It has, indeed, been denied that the words "commonalty of the realm" in the statute actually referred to the Commons. They were, in fact, redundant and meaningless. The object of the statute, it has been urged,¹⁹ militates against the idea

¹⁶ See p. 136 above.

¹⁷ Indeed, in some sense, they hardly begin it. See, for example, G. L. Haskins's interesting theories in *The Statute of York and the Interest of the Commons* cited above. The most massive and, within certain limits, the most authoritative treatment is that by Mr. Lapsley. See my comments on his valuable conclusions, in *Speculum*, XIX, 463.

¹⁸ This differs somewhat from the weighty conclusion of G. Lapsley in *E.H.R.*, LV, 420. Behind this difference there is possibly another difference relative to the aims of the baronial opposition; see *ibid.*, 415.

¹⁹ J. R. Strayer, *A.H.R.*, XLVII, 1-23.

that its authors had any "democratic" ideas of enhancing the parliamentary position of the Commons by making their consent necessary to any parliamentary acts. There are, it is said, plenty of instances where the words "commonalty of the realm" actually referred to the magnates alone, and they probably did so also in 1322. But against this line of thinking it can be argued that there is a good case, partly set forth by Professor Morris,²⁰ for translating "commonalty of the realm" frequently to refer to knights and burgesses: and that there is no good reason to believe that this was not its meaning in 1322. Given variations of meaning, it seems better to adopt one which does not make the phrase redundant and meaningless, and one which seems to be the complement of "people" used in the sentence before. The meaning "knights and burgesses" is supported, too, by the probability that the Commons would be given some sort of place, however small, in the work of the parliamentary assembly as late as 1322, though this is a matter of debate. They were certainly given a very important place amongst the parliamentary "estates" only four years later, on the deposition of Edward II.

Finally, the argument that to translate "commonalty" by "Commons" would be to make the statute deliberately enhance the position of the latter in parliament, against all the probable intentions of the royalists in their moment of victory, seems to be based on a questionable assumption. This is the assumption that, with this translation, the wording of the Statute of York would actually enhance the parliamentary position of the Commons. But, on the contrary, it can be argued that the purpose of referring to the Commons was actually to reduce their position. Enactments concerning the estate of the king, and of his heirs and of the kingdom and of the people, were to be made with the consent of prelates, earls, barons and the commonalty. That is, matters which concerned all these people were to receive the consent of all; but it would still be entirely in conformity with past usage ("as has been

²⁰ *Medievalia et Humanistica*, I, 58-94.

accustomed in times past") if matters which concerned only a part should be consented to only by that part. It seems reasonable to guess that, if the royalists had their way, the Commons would not consent to everything, but only to matters which concerned them, and that the number of these matters would be very small. Thus it is possible to translate "commonalty" by "Commons" without having to draw the improbable conclusion that the royalists were enhancing the position of the Commons in parliament; and the most formidable argument against translating "commonalty" by "Commons" seems to lose much of its validity.

On the whole, it seems probable, the phrase "commonalty of the kingdom," like every other phrase of this extraordinarily brief and important statute, was, as Lapsley argued, carefully chosen and significant. The primary purpose of the statute was no doubt to annul the Ordinances of 1311; but the ultimate purpose of the statute, it seems likely, went far beyond the ordinances. It was not only to ensure that all future legislation should be in parliament and not in non-parliamentary baronial assemblies; it was to make unconstitutional for ever any repetition of the baronial programme of reforming ordinances based on a commission extracted from the ruler and backed by a theory of violent opposition to an erring king.²¹ In this sense, the words "made under any authority or commission whatsoever" seem to be every bit as important as the words "shall be . . . established in parliament." It was as important for the royalists in 1322 to strike out the foundations of the baronial reforming programme as it was to condemn the particular expression given to it in 1321. In this, it may be argued, they were successful. They returned the constitution, in all essentials, to what it had been at least as far back as the reign of Edward I, wiping out every significant gain by the opposition since Edward II's accession to the throne.

²¹ Of course its authors could not prevent future legislation intended to undo the consequences of the Statute of York, any more than the Merciless Parliament could, by legislation, prevent future parliaments from imitating its actions. No doubt they were very well aware of this; but at least they safeguarded the king even from such legislation, as far as a statutory enactment could.

Englishmen accepted this one-sided settlement because the alternative seemed to be the threat of baronial dictatorship or of civil war. But it plainly put the constitution in a royalist strait-jacket. In a polity lacking in political vigour, it could have been the foundation for despotism. In vigorous fourteenth century England, it was likely to provoke further rebellion. Yet it invalidated in advance all the demands which successful rebels might impose upon the Crown. Thus the statute proved the logical prelude, not to revolt, but to revolution. Since no one ruler could be compelled to make concessions, the only alternative seemed to be a change of rulers. In spite of its royalist intentions, the somewhat paradoxical truth is that the royalist enactment of 1322 did more than any single statute of the Middle Ages to establish the ugly and dangerous instrument of deposition as a feature of English political life.

(c) *Documents*

- I. Letter of Thomas of Lancaster on Baronial "parliaments" held by the opposition to Edward II.
- II. The Meeting at Sherburn in 1321, according to the *Flores Historiarum*.
- III. The Meeting at Sherburn in 1321, according to the Canon of Bridlington.
- IV. Proceedings against the Despensers in July 1321, according to the Canon of Bridlington.
- V. The Statute of York, 1322.

I. *On Baronial "parliaments" held by the opposition to Edward II*

[In July 1317 the king remonstrated with Thomas of Lancaster for illegally holding "private gatherings"²² of magnates and of people and for keeping an excessive retinue of armed followers. The earl replied in a long letter in French, which the Canon abbreviates in Latin.]

May your revered lordship know that we have held no gatherings by which the people ought to be excited or given over to fear; nor do we retain any followers in order to disturb the kingdom or obstruct

²² *Convocationes privatas*.

the peace, but for the quiet of the people and for keeping stable the peace, and particularly and entirely for preserving the honour and advantage of your crown. . . .

In this connection, revered lord, you ought to remember that, in your last parliament held at Lincoln, you freely conceded, because your realm seemed to be ruled by insufficient and very unsuitable persons, that the lord Canterbury, with other bishops and earls, together with us and lord Bartholomew Badlesmere should, by the foreseeing and circumspect discretion of other great men sworn of your council, direct and better ordain the rule of your kingdom, so that dishonest and irregular ministers . . . should be far removed from your side, never to serve you further in any office. You have conceded that this ordinance of yours should always be stable and firm. And regarding this matter, we have met the wisest and most foreseeing of your councillors at London, with whom we have ordained for your household and for the rule of your realm precisely what seemed necessary; we have sent these ordinances to your reverence, in writing and by the hands of Bartholomew Badlesmere and William Inge, but they have so far been in no way observed.

Furthermore, revered lord, in the ordinances made by Robert Archbishop of Canterbury of good memory, it was found that several persons who held places amongst your *secretarii* and in other obediences, private and public, were acceptors of personal favours²³ and of gifts, corruptors of truth and of justice, and very insufficient and unsuitable to serve in offices of the king. It was ordained that you ought entirely to remove all such from your person and your obedience, but you have refused to do this; you have actually held them dearer, and you have drawn into your great confidence others of that kind and even worse; notwithstanding the fact that you confirmed the aforesaid ordinances by your letters patent and also bound the earls and barons and other royal ministers, by oath, to observe them in all their articles, as ought to appear by your letters in the matter in the hands of us and other magnates of the realm, though in effect these have not been in any way fulfilled.

And we beg you not to be astonished that we did not come to you on the appointed day, for the business concerning which you require our counsel and assent ought to be truly set forth and treated in parliament, in the presence of the peers of the land, according to

²³ *Personarum.*

the tenor of your letters. We have, indeed, all sworn to maintain this, as you know; and you ought not to wish to enact or treat about anything outside parliament, which ought to be determined in parliament.

Add to this also: you have signified in your last letters directed to us, that your enemies the Scots have again entered England in a hostile invasion, regarding which matter you have asked for our counsel and assent. We believe that you have taken counsel and made a further decision, as a result of which you have advised us and the rest of the magnates of the realm, by writ, to be at Newcastle at a certain day, with the services we owe you and that we should be prepared to proceed further if necessary. At which day, if you yourself are there, we shall, by the grace of God, be present.

—From the *Gesta Edwardi de Carnavan*, Auctore Bridlingtonensi, *Chronicles of Edward I and Edward II*, II, 50-2.

II. *The Assembly at Sherburn, 1321, according to the Flores Historiarum*

Whilst the king and Hugh Despenser in this way established themselves in that district [of London] for reasons of safety, and busily plotted a cruel vengeance which as yet they kept to themselves, there met at Sherburn in Elmet on 28 June, the archbishop of York, the bishops of Durham and Carlisle, the earls of Lancaster, Hereford, and Angus, Roger Mortimer the nephew and Roger Mortimer the uncle, Roger Clifford, John Giffard, John Mowbray, Roger Damory, Maurice Berkeley, Hugh Audley the father and Hugh Audley the son, with a good number of other chosen knights. They met to deliberate, with foreseeing counsel, about what should best be done to oppose the plots of the Despensers and the inexorable anger of the king.

When they had all discussed these matters in this council, as described above, it was established finally that they should adroitly seek the presence of the king and persuade him effectually through the prelates of the church, and for the peace of the king and the tranquillity of the realm and of the church, kindly to grant the exile of both Despensers, father and son, as disturbers of the peace, seducers of the king, and plotters against the leaders of the kingdom; and that he would confirm his proscription of them by an irrevocable judgement. And then, the council having finished with the ordinances of the aforesaid magnates, all the magnates except the earl of Lancaster and the bishops left singly; and they re-assembled

again in London, where the king and Hugh [Despenser] the son were, about August first, to accomplish without delay and effectively what had been arranged. They came surrounded with a force of many men, and with a strong band of men-at-arms. When all those who had come to seek the ruling [of the king] had gathered there, they sent bishops to the king, men of great authority, urgently asking that, for the stable condition of the realm and of the church, the exile which was desired should be made quickly, and publicly proclaimed by a royal edict. For, they said, if by chance the king refused what they were asking, and would not agree to their conditions, they would powerfully compel both the Despensers, father and son, to submit to it, even though they were unwilling, or they would condemn them to a shameful death, even to the separation of the flesh and the spirit by the edge of the sword. When the king saw the inflexibility of the determination of the barons, which he could not deflect from its purpose without the greatest loss, he gave in and granted the demands of the petitioners.

—From *Flores Historiarum*, III, 197–8.

III. *The Assemblies at Pontefract and Sherburn according to the Canon of Bridlington*

Also, on 24 May in 1321, in the chapter-house of the priory of Pontefract, all the under-mentioned lords met at the summons of the earl of Lancaster, in the presence of the earl and his followers.²⁴

. . . They each and every one, with unanimous consent and wish, for themselves and their friends and their allies, whom they can bring to agreement with them, have conceded the following. Many disturbances have now arisen in different parts of the land, by which the peace of the land may be disturbed to the dishonour of the king and of the kingdom, and also to the great loss and suffering of the people. Because of this, each and every one is willing, and each one had promised faithfully for his own part, to be of one mind and agreement in defending his lands and country. If any one shall rise against the said earl, or against any of them whomsoever, all shall be ready to help and to defend against all those who, in any way,

²⁴ The names are Thomas Multon, Thomas Furnival, Edmund Daincourt, Henry Fitz Hugh, Ralph Graystock, Gilbert Aton, Marmaduke Twenge, Nicholas Maynil, Henry Percy, John Marmillon, Philip Darcy, William Fitz William, John Fauconberg, John Daincourt, and Robert constable of Flamborough, barons and bannerets.

wish to attack them maliciously, however much it threatens loss and dishonour to them or to any one of them. Each one shall prepare himself, in the best and most effective manner possible, to do this manfully; so that universal peace can better be fostered in the land, and the peace and profit of the people more safely kept.

Each of the above lords confirmed this agreement, or rather, confederation,—[each copy] of which was written in exactly the same words, in French,—by affixing his seal; and since it seemed to these lords that the above business required greater counsel, and especially that of the prelates, the earl of Lancaster wrote to the archbishop and all the other prelates of the province and diocese of York, that they should all assemble together on 28 June at Sherburn in Elmet to deliberate on business concerning the peace and profit of the people.

On this day, the archbishop, the bishops of Durham and Carlisle, the earls of Lancaster and Hereford, the abbots and priors, and a good number of barons and bannerets, Northern and Southern, met in the parish church at Sherburn. In the presence of whom, John Beck, a knight, read certain articles, by command of the earl, which he claimed needed correction. I do not give these word for word, as they were read in French, but I express their meaning briefly, since this was veiled by flattering words.

The first article then, after the recitation of the premises, contained, among other things, that if they should know, or should learn of, any considerations or unlawful oppressions in any way brought about by evil counsellors or unsuitable ministers of the king, to the loss or dishonour of the people or of the crown, they should point out such oppressions and clearly declare them before the earl himself, so that a suitable remedy could be provided by common counsel and unanimous consent.

Also it seems, revered lords, that those who have received the offices by which the realm ought to be ruled, namely, the chancellor, treasurer, chamberlain, justices, keeper of the privy seal, escheators and others who ought to be appointed by election, and have received their offices against the oft-mentioned ordinances, are the cause of the new evils and oppressions by which the people are very much grieved. It is proper, therefore, that a quick remedy should be provided.

Also a remedy should be found against novelties introduced against the magnates of the land: namely, that they who seek the lands and

tenements which they hold in chief from the king, for the accustomed services, are repelled, and they have to suffer the forfeiture of everything; and also remedy for those who have been disinherited and deprived of property by illegal means²⁵ without the assent of the peers of the land being asked for.

Also a remedy concerning the justices who enquire about different transgressions, by royal commission and at the instigation of the evil counsellors, and cause the magnates of the land to be indicted, so that they can be disinherited by these conspiracies, against the established laws and for various far-fetched reasons, in oppression of the people.

Also because the said counsellors have appointed itinerant justices for London, and have caused the king to direct against the inhabitants the writ *Quo Warranto*, so that they were called on to answer how they held the rents and franchises which they and their predecessors held and which had been used since the Conquest. And by such evil counsellors they try to disinherit and afflict the people beyond measure.

[Also a remedy for abuses of the staple, for unstatesmanlike treaties and the king's dealings with lawyers.]

When these articles had been read, the earl asked all the prelates to retire for a time, and to reply to what had been proposed according to their will. They, having received copies of the articles, went to the manse of the rector of the church; and when they had deliberated, they immediately sent to the earl the following reply:

"Revered lord, the prelates and clergy of this diocese and province who have all gathered at your request, thank you humbly and from their hearts, that such great love fills your heart, for the kingdom and for this province.²⁶ And because they all fear the invasion of the Scots, to destroy the province as they have destroyed it before, and to commit evil—if they enter—as they have committed it before, the prelates all consent to give aid, as far as they are able, to you and the other magnates and the *communitas* summoned together, so that the malice of the enemy can be repressed, always saving the status of the clergy and of the church.

Also, regarding the other disturbances recently raised in the land, they humbly and devotedly beg your lordship and the others who are with you here, that there should be a tolerance of these move-

²⁵ *Exjudicati sunt.*

²⁶ *Patria.*

ments in so far as they are due to reverence for and honour of God and holy church, the salvation of the realm and the peace of the people; and that a friendly agreement and unity be ordained in the next parliament, between the lord king and his lieges, by peaceful deliberation in Christ, as best seems fitting. By which they all believe that, with the help of God, a proper remedy will be ordained for the matters in the articles which were presented in this parliament."

When this reply, in writing, had been read before the earl, he gave special thanks to the prelates and clergy, and thus each, with permission, went away.

—From the *Gesta Edwardi de Carnarvan*, Auctore Bridlingtoniensi, in *Chronicles of Edward I and Edward II*, II, 61-5.

IV. *The Proceedings against the Despensers, July 1321, according to the Canon of Bridlington*

Proceedings against the lords Despenser, father and son, in this year, in the parliament held at London, 15 July. The earls put forward the following articles to the king, against the Despensers.

In the first place, homage, oath and allegiance are more to the crown than to the person of the king. [Here follows the Declaration of 1308 given above.] Then there follow XII articles whose verbosity is considerable, but the whole intention of which is directed towards the destruction and annihilation of both the Despensers, father and son. I will abbreviate their words in the following, with the help of God; but I will give you the meaning.

Therefore, the earls and barons brought forward before the king, against the aforesaid father and son as follows: Hugh the son . . . had been assigned to, and was holding, the office of chamberlain. . . . In the parliament at York it had been ordained that a certain number of persons and other magnates must be about the king during certain times of a particular year,²⁷ without whose knowledge and counsel no arduous business ought to be done. But the aforesaid Hugh the son drew his father to him, although there was then no agreement that anything concerning²⁸ the king should be changed. Yet now, drawing to himself the leadership of the kingdom and the royal power, to the dishonour of the king, to the detriment of the crown and the destruction of the people and of the

²⁷ *Quaedam certae personae . . . per quaedam anni certi tempora.*

²⁸ *Circa.*

magnates, the two performed the iniquities which follow, imagining to remove the king's heart from the peers of the land, so that they might alone, between them, be able to rule the kingdom. This was so much the case that they do not [now] permit the king to show a cheerful countenance or gracious spirit to men of either greater or lesser degree. Nor can the king reply to the people except according to the wishes of these two. Thus they have estranged the hearts of the subjects from their lord and the heart of the king from the magnates and from the people.

Also they do not permit the magnates of the land to bring discussion to the king, so that they can give him sound and loyal advice, unless it be in the presence and hearing of themselves or of one of them. They repel magnates and good counsellors from their liege lord, and draw to themselves royal power, magistracy and supremacy over the person of the king, to the disinheritation and danger of the king, the kingdom and, equally, of the crown.

Also, to satisfy their greed in the disinheriting and destruction of the people and magnates, they have removed the good counsellors and officials who had been appointed by common assent, and they have introduced false ministers of their own opinion, namely *magister* Robert Baldock, keeper of the privy seal, William of Cusance, a foreigner, private clerk of Hugh the son and keeper of the great wardrobe, and William Cliff, similarly clerk of Hugh; and they caused them to be sworn of the king's council, so that no writ touching or having respect to Hugh the father or son was permitted to be issued. Nor could writ be issued regarding any other person whose business they wished to promote or impede—there in that place, where, above all, justice ought never to be denied.

[Then follow seven other indictments which are omitted.]

These evil counsels and deeds having been given a preliminary examination, by the prelates, earls and barons and many other peers of the realm, were verified and established by their notoriety. Therefore the prelates, earls and barons and the community of the land beg the king that the aforesaid Despensers father and son be exiled from the realm of England, as false and most evil counsellors of the king, disinheritors of the crown and destroyers of the people, never to return. On this let a statute be made in the present parliament, as a permanent reminder of the matter and example for evil advisers, so that nobody shall dare in future to err in this manner.

Wherefore we, peers of the land, earls and barons, consider,²⁹ in the presence of our king, that the before-mentioned Despensers father and son, are to be perpetually exiled as disinheritors of the crown. They are to be outlawed from the realm of England, never to return unless by the assent of our king and of the magnates. This assent is to be given in a parliament duly summoned. And we give them the port of Dover and no where else, for crossing and departing from the realm of England before the next feast of St. John the Baptist, including that day (August 29). And if the aforesaid Hugh and Hugh shall remain in the realm of England after that day appointed for their leaving, or if they ever return, unless as described above, then let them be treated as notorious enemies of the realm.

It is a wonderful matter to behold how the members become disjointed from the head when consideration is made by the magnates in parliament, without need for the assent of the king; for the members, judging, wish to destroy those they have judged, and the head, not called into judgement as judge, wishes to protect the condemned with the plenitude of the royal power.

—From the *Gesta Edwardi de Carnarvan*, Auctore Bridlingtoniensi, in *Chronicles of Edward I and Edward II*, II, 65-71.

V. Statute of York, 1322

Our lord King Edward, son of King Edward, on March 16, in the third year of his reign, granted to the prelates, earls and barons of his realm . . . power to make ordinances. The archbishop of Canterbury, primate of all England, and the bishops, earls and barons chosen for the purpose, drew up certain ordinances . . . , which ordinances our said lord the king caused to be rehearsed and examined in his parliament at York three weeks after Easter in the fifteenth year of his reign. . . . Through that examination in the said parliament, it was found that, by the ordinances thus decreed, the royal power of our said lord the king was wrongfully limited in many respects, to the injury of his royal lordship and contrary to the estate of the crown. Furthermore, through such ordinances and provisions made by subjects in times past against the royal authority of our lord the king's ancestors, the kingdom has incurred troubles and wars, whereby the land has been imperilled. [Therefore] it is agreed, and established at the said parliament by our lord the king, by the said prelates and earls and barons, and by the whole com-

²⁹ *Consideramus*.

munity of the realm assembled in this parliament, that everything ordained by the said Ordainers and contained in the said ordinances shall henceforth and forever cease [to be valid], losing for the future all title, force, virtue, and effect; and that the statutes and establishment duly made by our lord the king and his ancestors prior to the said ordinances shall remain in force. And [it is decreed] that, henceforth and forever at all times, every kind of ordinance or provision made under any authority or commission whatsoever, by subjects of our lord the king or of his heirs, relative to [*sur*] the royal power of our lord the king or of his heirs, or contrary to the estate of the lord king or of his heirs or contrary to the estate of the crown, shall be null and shall have no validity or force whatever; but that matters which are to be determined for [i.e. favourable to] the estate of the king and of his heirs, and for the estate of the kingdom and of the people, shall be "treated," granted, and established in parliament by our lord the king and with the consent of the prelates, earls, and barons, and of the commonalty [*communalte*] of the kingdom, as has been accustomed in times past.

—From the *Statutes of the Realm*, I, 189.

Chapter IV

DEPOSITION OF EDWARD II AND THE ACCESSION OF EDWARD III

(a) *Some Recent Works*

CLARKE, M. V. "Committees of Estates and the Deposition of Edward II," in *Essays in Honour of James Tait* (Manchester, 1933), 27-45.

Medieval Representation and Consent (London, 1936).

GRAY, H. L. *The Influence of the Commons on Early Legislation* (Cambridge, Mass., 1932).

HARCOURT, L. W. VERNON. *His Grace the Steward and Trial of Peers* (London, 1907).

HUGHES, DOROTHY. *A Study of Social and Constitutional Tendencies in the Early Years of Edward III* (London, 1915).

McKISACK, MAY. "London and the Succession to the Crown during the Middle Ages," in *Studies in Medieval History Presented to F. M. Powicke*, ed. R. W. Hunt, W. A. Pantin, R. W. Southern (Oxford, 1948), 76-89.

STUBBS, W. *Chronicles of Edward I and Edward II* (R.S.), II, 1883, Introduction.

WILKINSON, B. "Deposition of Richard II and Accession of Henry IV," in *E.H.R.*, XLIV (April 1939), 215-40.

"The 'Political Revolution' of the Thirteenth and Fourteenth Centuries in England," in *Speculum*, XXIV (October 1949), 502-9.

(b) *Introduction to the Documents*

IN one sense, it has already been suggested, the deposition of Edward II was a natural sequel to the Statute of York. In another, it was the sequel, long delayed, to all the deterioration of English politics that had occurred since the memorable crisis of 1297. Neither the experiment of 1308 nor the royalist

restoration of 1322 had succeeded in effecting a return to political health. Their most important result was, indeed, to demonstrate the bankruptcy of political extremism. What England needed was a compromise comparable to that which was made three and a half centuries later, in the Restoration of 1660, which would go far to satisfy both sides, but leave the monarchy substantially unimpaired. This, curiously enough, was to be achieved only by the extreme act of deposition. But that is not really surprising. Only through deposition could the tangled conflict into which England had slowly drifted since 1297 be unravelled, and a new start be made.

The whole crisis is illustrated here by eight documents. The first consists of the articles of accusation against Edward. They are not an official record; but they were published by the opposition to Edward II. They were the work of John Stratford, Bishop of Winchester, an old administrative official who was made acting head of the exchequer on 14 November, 1326, and were drawn up by his secretary, William of Mees.¹

Document II is an account of Edward II's deposition from the pen of Geoffrey le Baker. Geoffrey represents the way in which the history of England in the fourteenth century was increasingly written by secular clerks. His interest in the Hundred Years War caused T. F. Tout to call him one of the school of "drum and trumpet" historians. His story of Edward's deposition is "noteworthy for its touching details of Edward II's fall and death," and is obviously well-informed.

The second description of this episode, from the *French Chronicle of London*, represents the London story. It is a continuation of the secular histories of London, already illustrated in this work² by the *Liber de Antiquis Legibus*. If it was not written by a citizen of London, at least it was written by somebody who was obviously absorbed in the life of the great metropolis.

Alongside these chronicles are some official records. Document V is the official announcement of Edward II's abdication.

¹ *Cartulary of Winchester Cathedral*, ed. A. W. Goodman (Winchester, 1927), 106.

² Volume I, p. 144.

Though the Coronation Oath of Edward III probably formed an important part of the settlement of 1327-30, it is omitted, as it was a repetition of that of Edward II;³ but the tenor of the new settlement is illustrated from some of the early statutes (Doc. VI). In Document VII, coming from the Close Rolls in the year 1330, Edward proclaimed his intention of ruling with his magnates and in no other manner. Finally, Documents VIII and IX illustrate the judicial developments which attended the deposition of Edward and the accession of his son.

The main problem relative to these two events may perhaps be approached by a series of questions. What led to the unprecedented step of deposition, which had been talked of occasionally before, but never actually adopted since the Conquest? What was the exact process by which Edward was deposed? What was its effect on the constitution? Finally, what was the nature of the settlement which followed? Was it simply a triumph for the old opposition? How far did it undo the royalist restoration of 1322?

Some material for answering the first question has already been provided. More is given in Document I. The official reasons for Edward's deposition may have differed widely from the real reasons, but they have a very great interest. They show what Mortimer and Isabella thought the country would believe and accept as adequate for such a tremendous step. Edward's first crime to be listed was incompetence. It was that of being both unfit to rule in his own person, and being under the control and government of others who were themselves not mindful of the interests of the state. The king, it was said, had not been able to distinguish between good and evil. He was unwilling to have his duties, which he could not perform himself, done by the great men of the realm. The result of his incapacity and his refusal had been disastrous for the state, especially in the realm of foreign policy; and reference was made to his failures in Ireland, in Scotland and in France. Edward had failed in his duty to the Holy Church and killed,

³ It is printed in *Foedera*, II, 684; reference to it is made in my "Coronation Oath of Edward II," listed above, and in the works of Richardson and Sayles.

imprisoned or exiled many noble men; no doubt a reference, in particular, to the execution of Thomas of Lancaster which was such an important factor in the success of the opposition. There was a reference also to Edward's failure to keep his coronation oath.⁴

The king was not charged with tyranny; there is no clear statement that Edward had pursued a policy of subverting the constitution.⁵ The details of the conflict between him and the barons were passed over in silence. The opposition to Edward apparently did not wish to make a great issue of Edward's quarrel with the barons. They offered a cessation, not a revival, of political strife. Perhaps this indictment, therefore, obscures rather than expresses some of the important causes of the deposition. Nevertheless it seems clear that there was no attack on the sovereignty of the ruler. There was no denial of the king's duty to rule. The complaint was that he had ruled too little, not too much. The deposition was not, apparently, intended to change the monarchy. It was a rejection of a particular monarch, not of monarchical rule.⁶

Nevertheless, the act of deposition could not fail to have important consequences. It not only affected the constitution profoundly; it also made Englishmen reflect deeply on the nature of their constitution. There was no constitutional machinery by which a king could be deposed. The great institution of parliament inevitably suggested itself for this purpose. But there were two insuperable difficulties in the way of its use. In the first place, parliament still depended entirely on the presence and initiative of the king. It had grown, historically, out of the act of "treating" between king and *universitas*. The time was still long distant when the latter could assume many of the powers and functions of both. Indeed,

⁴ In all these things, it was asserted, Edward had shown himself incorrigible and without hope of amendment.

⁵ It is true that he had "stripped" his realm, and "ruined" his realm and his people; but his real crime was incompetence and evil advisers. This is exactly the theme of the Bishop of Hereford's sermon on 13 January 1327, described in Document III below.

⁶ For a similar attitude, see the proclamation of Isabella and Edward at Wallingford, on 15 October, with its appeal to the "people of the land"; *Foedera*, II, 645-6.

the historic contribution of the monarch had been strongly underlined in 1322. In the second place parliament, however constituted, could not try the monarch. "Parliament" was not a court; the court was the king in parliament. The king could not be condemned unless he condemned himself. These difficulties led to some interesting subterfuges and evasions. Nevertheless, deposition showed that parliament, even perhaps the "estates" of parliament, was the true centre of the political life of the nation; and that, although there was no court of parliament, the indictment and condemnation of an individual, even of the ruler himself, by the community of England in the national assembly, might be as effective as the judgement of a court of law.

Thus, perhaps the second question suggested above, the much discussed problem of whether or not Edward's deposition was "parliamentary" need not detain us.⁷ Contemporaries were certainly not entirely clear about it; but their very confusion is illuminating; and in any case the strict constitutional tradition on the subject would seem to be clear. In the main, the records translated below seem to suggest that neither was Edward formally deposed by "parliament," nor was the deputation which went to force his abdication a "parliamentary" deputation. Thus, according to the *French Chronicle of London*, the articles against Edward were declared before all the baronage. "All the people" granted and cried that Edward should be deposed. According to the *Chronicle of Lanercost*, the prelates got the agreement of all the people. The deputation which went to Edward spoke in the name of "all the realm." Despite this, the proceedings were associated, as in the words of Sir Thomas Moore in the extract below (Doc. II), with parliament. They very greatly enhanced the importance of that body. They gave unprecedented importance in it to the Commonalty, now becoming an integral part of the whole.⁸

⁷ There is a detailed discussion in my article, "The Deposition of Richard II," listed above.

⁸ This was the view taken in my *Studies*, 37-44; but it is not the view of some modern writers; see *Interim Report of the Committee on House of Commons Personnel and Politics, 1264-1832* (H.M.S.O., London, 1932), 16.

For a brief period, they made the idea of parliament find expression not so much in the ruler treating with his subjects, but in the Lords and Commons acting together to maintain the interests of all the land.

The deposition not only enhanced the position of parliament. Itself a great act of illegality, it nevertheless enhanced also the supremacy of the law. There was no law by which a king could be punished. As Bracton had said, if he would not amend an injustice in his court, his punishment must be left to God. In 1308, the barons had justified violent opposition on the grounds that all justice was the king's. Nevertheless, just as the estates of parliament were used to give their sanction to deposition, so was the majesty of the law. There was something which looked like a legal process, possibly before the barons. There was no formal judgement; but the decision to depose Edward was on the basis (Docs. I and IV) of Articles of Indictment; and the charges were proved by notoriety, a method of legal proof.⁹ Thus no doctrine was proclaimed of the existence of any court in which the king himself could be tried; but the actions of the Lords and Commons certainly contributed towards the evolution of such a court. There was no attempt to create a theory of a High Court of Parliament; but precedents were established which pointed towards parliament as the "place" where the new court would ultimately be formed. There was no assertion of a law and procedure of parliament; but it is likely that one origin of this law and procedure, as enunciated for instance in 1388, was the "lawless" revolution of 1326.

The fourth question asked at the outset of this chapter related to the nature of the settlement which followed the deposition. This is so important that perhaps it should be introduced by a few general remarks. Stubbs saw little that was worthy of comment in the settlement. Professor Tout gave much more importance to it. He talked about a "systematic reversal of the Despensers' policy" and a "revival of the Lancastrian tradi-

⁹ Which had also been employed against Thomas of Lancaster, and was again to be employed, prominently, in 1376; see Chapter VI, below.

tion.”¹⁰ Changes in the details of government, he thought, showed the new order to be the work of reactionaries; but the new government assumed a “constitutional attitude,”¹¹ shown in the frequency of representative parliaments and the great variety of business referred to them.¹² There seems to be little doubt that this represents an important step forward in our understanding of the problem. Perhaps it is possible to add one or two generalizations to those of Professor Tout.

The settlement of 1327 should perhaps be considered along with that of 1330, when Edward assumed personal control. As far as can be seen, both movements were generally supported throughout the country. They included almost all shades of opinion. They included a strong Lancastrian element, irrevocably hostile to Edward since Thomas’ execution in 1322, which must be credited, it seems likely, with an adherence to some, at least, of Thomas’ views. They also included, in 1330, a group of brilliant young magnates whose interests lay strongly in reconciling the claims of the magnates and of the king. They included, finally, a body of moderate opinion, especially amongst the bishops, which was not favourable to either extreme monarchical or extreme baronial views. It may be guessed that one reason why the nation had fallen away completely from support of Edward was that it was weary of political strife; and this fact (if, indeed, it is a fact) can hardly have failed to influence both Isabella and Edward III. The settlement of 1327–30, taken as a whole, was likely to be moderate. It would go back neither to 1308 nor to 1322 for its inspiration; and it would try to allay bitternesses by avoiding the precedents established by either the king or the opposition under Edward II.

Thus the twin settlements were likely to be, and were in fact, one of the great compromises of English history. That of 1327 incorporated some very incongruous elements, on the basis,

¹⁰ *Chapters*, III, 7 and 8.

¹¹ *Ibid.*, 12.

¹² *Ibid.* “So insignificant a matter as the restoration of their lands to the alien priories, after the conclusion of peace with France, was made ‘with the assent of the prelates, earls, barons and other magnates in the present parliament’.”

apparently, of Walpole's "quieta non movere." Edward III took the same coronation oath as that which had been the prelude to much trouble under his father. At the same time, the extreme royalist Statute of York remained unrepealed. Edward's own statute of 1327 had as its central feature nothing more striking than a confirmation of the Charters and a safeguard against excessive demands for military service from the freemen of the nation. Alongside this, however, was a reversal of the proceedings by which Thomas of Lancaster had been condemned, and a reiteration of those against the Despensers. The Commons were allowed to pray for the canonization of Thomas. Henry of Lancaster held first place in the council of regency after 1327.

The spirit of Edward III's government after 1330 is well expressed in a proclamation to the sheriffs (Doc. VII), in which the young king declared his intention of disposing of the *negotia regis et regni*,¹³ in future, "by the common counsel of the magnates and in no other manner." There can be little doubt that this was a carefully worded declaration of policy. Nor does it seem that the policy it expressed was quite the same as that of 1327. It is notable in that it associated only the magnates, not the Commons, with the monarch; and it associated them in both the affairs of the community and of the king. The spirit of 1330 was aristocratic. National unity was to be obtained by the old and safe tradition of co-operation between king and his "natural" advisers, not by giving the Commons an inflated position in the state. But it was to be achieved by a co-operation in all the business of the state. This was the final enunciation of a principle for which the lords of England had been striving since the accession of Henry III.

Nevertheless, nothing could now destroy the rising importance of the Commons. It is curious to observe how even this aristocratic and traditionalist restoration served to strengthen their position. Part of the new co-operation in government was in legislation and this is copiously illustrated in the early enact-

¹³ "The matters which touch us and the estate of our realm."

ments of the new monarch, some of which are translated below.¹⁴ The form of this legislation was, perhaps, one of the most remarkable consequences of the whole settlement.

The settlement of 1327-30 included what at first sight seem to be irreconcilable commitments on the all-important question of legislation. The Statute of York provided for initiation only by the ruler. It gave to the community only the function of assent. The Coronation Oath, on the contrary, gave them a right of initiation and bound the monarch to agree to what they justly proposed. That some importance was attached to the promise seems to be placed beyond doubt by the question of John of Sudely at the coronation, whether Edward would wish¹⁵ to keep the laws which the people chose, and the Bishop of Rochester's reply that unless Edward swore to keep the laws he would not be crowned. Thus there seem to have been two directly contradictory obligations imposed on the ruler, neither of which could be omitted or rescinded without reviving old and bitter quarrels. How to reconcile the two must have been an urgent and inescapable problem to the advisers of the young king. It is possible, of course, to argue that the problem was solved simply by ignoring it. But this argument is not easy to maintain in face of John of Sudely's question; and in any case, it does little credit to the intelligence of Englishmen at this time. It seems safer to conclude that the question was very seriously considered, and that some sort of a solution was actually found.

If this is the case, it is hard to dissociate that solution from the form which legislation actually took during and after this

¹⁴ In 1331 Edward asked the magnates in parliament whether they would prefer war or negotiation with France; *Rot. Parl.*, II, 61. In 1337, he proclaimed to the nation the efforts he had made for peace with France; *Foedera*, II, 989, 990. His first expedition, against France, he said in 1338, was made with the assent of the Lords, at the request of the Commons; *Foedera*, II, 1015.

¹⁵ *Vellet*. Mr. Richardson translates this "should wish" and quotes this important passage (*T.R.H.S.*, XXIII, 154) to show that the propriety of the fourth interrogation was questioned. This may be the correct interpretation, though it is open to question. In any case, the Bishop of Rochester's reply, though not free from ambiguity, seems to show that those in power intended the coronation promise to be taken seriously, even if not literally. The passage is taken from the *Historia Roffensis*, fo. 49.

restoration. It is at just this point in history that we get finally established the method of legislation, which was to persist all through the later Middle Ages, of petition by the Commons and acceptance by the king. The year 1327 may have been a landmark in the series of common petitions, representing matters of common interest, presented by way of knights or burgesses, and frequently leading to statutes. Later in the reign, these petitions became Commons petitions, and began to be amended by the Lords before they were forwarded to the king. But immediately after the settlement of 1330, the normal procedure in legislation was petition by the Commons and grant by the monarch, with the assent of the Lords.¹⁶

We cannot be sure that this procedure was, in fact, regarded as a solution to the dilemma which confronted constitutionalists at Edward's accession. Much work still remains to be done on the problem.¹⁷ But whether or not it was deliberately adopted, it was, in fact, a solution. It provided for legislation by the ruler with the assent of his subjects, as set forth in the Statute of York. It allowed the subjects in effect to "choose" the just laws, as set forth in the Coronation Oath, though it left the king complete freedom to reject what he did not consider to be just. The procedure may well have seemed a satisfactory compromise acceptable to all parties and conforming to all existing demands of the constitution. Whatever its exact origin, it expressed in most opportune fashion the spirit of the great settlement which inaugurated Edward's reign.

The spirit of the settlement also showed itself in the trials of political offenders. Both royalists and reformers had made a contribution to these under Edward II. The problem first became important in 1308, with the movement against Peter Gaveston. The indictment of Peter shows the magnates searching for a judicial procedure against their political enemies, even

¹⁶ The variations and exceptions to this, such as that in Statute I. Doc. V below, have never been analysed in detail.

¹⁷ The whole subject of these petitions is discussed by Professor Gray in the volume cited above. Cf. S. B. Chrimes's *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936), 236-49; Miss D. Rayner, "The Forms and Machinery of the 'Commune Petition' in the Fourteenth Century," in *E.H.R.*, lvi (April and October 1941), 198-233, 549-70.

whilst relying on force. The same is true of the indictment of the Despensers in 1321. There was an attempt, on both occasions, to get parliamentary sanction for the baronial "award." The Despensers, on their restoration, had condemned the lack of proper procedure and of a proper court, in the process by which they had been condemned.¹⁸ Later still, Henry of Lancaster complained that Thomas of Lancaster had been condemned "without arraignment or reply." Both sides seem to have been united on the need for recognizable justice, but they did not agree on any court and procedure by which it could be obtained.¹⁹

It seems probable that, from the first, men's eyes were turned in the direction of parliament. There existed, in parliament, the "tribunal" of the magnates, who already assisted the king in the most important cases. Parliament was the only place of justice which was not merely a king's court; or, at least, it was a court where the community of the realm could play a conspicuous part. It offered the only substantial hope of an impartial tribunal between the king and his political opponents, even though its impartiality could hardly be complete. Of course there were tremendous obstacles in the way of the development of parliament as the High Court of the Realm, and not merely the king in his council in the presence of his magnates. One of these was the paramountcy of the king himself in parliament. Another was the danger of any such "impartial" tribunal falling under the dominance of the Lords. The same friction between Edward and his magnates which made the need for an impartial tribunal apparent, also militated against the use of parliament by either side.²⁰

¹⁸ *Rot. Parl.*, III, 362; Bridlington II, 70.

¹⁹ It may perhaps be permissible to guess that the barons found it difficult to use parliament on account of the authority of the king, and the king found it difficult because of the opposition of many of the Lords. Hence both sides, in their moment of triumph, had tended to destroy their opponents by processes outside parliament.

²⁰ Parliament, including both Lords and Commons, was used in an unprecedented fashion by Mortimer and Isabella to secure the condemnation of Edmund of Kent in 1329; *Foedera*, II, 783. Both Lords and Commons were said to have given judgement. But there was apparently a reaction in 1330 and 1331 against this extreme position and judgement was restored to the Lords.

After 1330, however, the situation was different. The need for such a tribunal was diminished, but the possibility of obtaining it was greatly increased. The king and his magnates were now in harmony. The latter could be used, in co-operation with the ruler, not against him, to provide judgements in parliament. A precedent could be set, based on the principle of co-operation, which could never have been arrived at through the bitter political dissensions which had marked the reign of Edward II.

In 1330 Roger Mortimer was tried in parliament.²¹ He was tried by a legal procedure, and his guilt was established by "notoriety." His offences were "known to be true, by you the Lords and all the people of the realm." His judges were the Lords, now called the "judges in parliament." One reason why the Lords were called on to give judgement, it was said, was that the matter touched not only the king but also all the realm. This was a significant principle of action. It suggested that the judgement of the Lords in parliament was a matter not of expediency but of constitutional right. The cases were as much within the competence of parliament as were important political decisions. They were included in the *negotia regis et regni*; they were something which could not be disposed of by the ruler alone. The significance of this precedent was established by the fact that, after Roger's trial, Edward asked the Lords to give judgement on Simon of Bureford, who was not a peer of the realm. They agreed, not as peers, but as judges of parliament. Shortly afterwards, the Earl of Devon boasted that he was a peer of the king and could enact laws and give judgements in all matters.²²

All this did not create a court of parliament. But it was an important step towards it. The new principle was capable of indefinite extension. The Lords who judged Mortimer and Bureford were judges of parliament, not simply of the king. They "represented" the nation as well as served the monarch.

²¹ *Rot. Parl.*, II, 53.

²² D. Hughes, *The Early Years of Edward III* (London, 1915), 146.

In one important respect, by excluding the Commons from participation in political trials, the procedure of 1330-1 actually for a time militated against the evolution of a High Court of Parliament; but this was more than counterbalanced by the acceptance of parliamentary procedure and the judgement of the Lords. It shows the importance of the reaction of 1330-1 against the Lancastrian popular appeal, but the circumstances were such that the renewed participation even of the Commons in such political trials was probably only a matter of time.

In the great settlement of 1327-30, it seems likely, the political violence and extra-parliamentary "legislation" of the reign of Edward II was to be replaced by true parliamentary government based on the co-operation of the magnates and on the supremacy of law. This was to provide the real basis for the astonishing success of Edward III. The new settlement was, in fact, fruitful and enduring because it was a fair compromise between the conflicting claims of monarch and people. It kept the balance of the constitution. It enabled the government to be strong and capable of resolute leadership; it enabled the Lords, and eventually also the Commons, to retain and even to expand their contribution. It gave England peace and stability and was a landmark in the evolution of the great political experiment of limited monarchy. It did not provide any permanent solution to the constitutional problems of the period. It was probably not even intended to do so. But it did provide a breathing space in which habits of lawfulness and moderation could be re-established; it enabled institutions to be matured through which further advances could be made. Sober, realistic and conservative, it was one of the great political achievements of the period 1216 to 1399. It is also, as yet, one of the least-known and most baffling. It is likely that many modifications will have to be made in the above tentative interpretation, in the light of further research. But perhaps it is safe to prophesy that the significance of this settlement as one of the great compromises of English history will not be entirely destroyed.

(c) *Documents*

- I. Articles of Accusation against Edward II.
- II. Deposition of Edward II according to the adaptation of Sir Thomas Moore.
- III. The same according to the *French Chronicle of London*.
- IV. Announcement of Edward's Abdication, 1327.
- V. Legislation in the early days of Edward III.
- VI. Edward III's proclamation of his intention of ruling with consent.
- VII. Errors alleged by Henry of Lancaster, 1327, in the proceedings against Thomas.
- VIII. Condemnation of Roger Mortimer in 1330.

I. *Articles of Accusation against Edward II*

It has been decided that prince Edward, the eldest son of the king, shall have the government of the realm and shall be crowned king, for the following reasons:

First, because the king is incompetent to govern in person. Throughout his reign he has been controlled and governed by others who have given him evil counsel, to his own dishonour and to the destruction of holy church and of all his people, without his being willing to see or understand what is good or evil or to make amendment, or his being willing to do as was required by the great and wise men of his realm, or to allow amendment to be made.

Also, throughout his reign he has not been willing to listen to good counsel, or to adopt it, or to give himself to the good government of his realm; but he has always given himself up to unseemly works and occupations, neglecting to satisfy the needs of his realm.

Also, through the lack of good government he has lost the realm of Scotland and other territories and lordships in Gascony and Ireland, which his father left him in peace; and he has lost the friendship of the king of France and of many other great men.

Also, by his pride and obstinacy and by evil counsel, he has destroyed the holy church and imprisoned some of the persons of holy church and brought distress upon others; and also he has put many and noble men of this land to a shameful death, imprisoned, exiled and disinherited.

Also, whereas he was bound by his oath to do justice to all, he has not willed to do it, for the sake of his own profit and from his greed

and that of the evil councillors who have been about him; nor has he kept the other points of his oath, which he made at his coronation, as he was bound to do.

Also, he has stripped his realm, and done all that he could to ruin his realm and his people, and what is worse, by his cruelty and lack of character, he has shown himself incorrigible and without hope of amendment; which things are so notorious that they cannot be denied.

—From Twysden's *Historiae Anglicanae Scriptores Decem*, col. 2765; Rymer's *Foedera* II, 650; translated by Adams and Stephens, 99.

II. *Edward II's deposition according to the Life and Death of Edward II by Geoffrey le Baker and Sir Thomas Moore*

Immediately after Epiphany, in a parliament summoned by them [Roger Mortimer, etc.], it was ordained and constituted, nobody daring to object, that three bishops, two earls, two abbots, four barons, two knights from each shire in England, and two burgesses from each city and chief town of every shire and similarly from the ports, should be sent on behalf of the whole kingdom, to the king in custody at Kenilworth, to do what is written below . . . [they try to persuade Edward to resign]. They threatened him that, unless he resigned, the people would withdraw their homage and fealty to him; they would repudiate his son, and they would appoint somebody to the throne who was not of royal blood. [The king consented, for the sake of his son and his country.]

Finally, the bishop of Hereford led the rest of the king's enemies to the castle where the king was enclosed, and arranged them in the king's chamber in order of dignity. . . . Then his royal majesty entered, dressed in a black cloak, and proceeding from an inner room. [Edward fainted from sorrow. He submitted to the demands made by the bishop of Hereford. All the realm renounced its homage and allegiance to him, through the person of William Trussel. The envoys returned "ad parlamentum." The "communitas regni", Edward's resignation thus accomplished, accepted his son as king.]

—From *Chronicles of Edward I and Edward II*, II, 313, 314.

III. *Deposition according to the French Chronicle of London*

And thus on the Tuesday of St. Hilary, the archbishop of Canterbury declared several articles against the king, at Westminster before

all the baronage of the land. On account of which all the people granted and cried that he should not reign any longer, and that one should make his son, the Duke of Guienne, king. Wherefore, bishops, abbots, priors, earls, barons, knights and burgesses were sent to him [Edward] in the castle of Kenilworth, to hear his wish; whether he wished to consent to the coronation of his son and resign the rule of the kingdom,²³ and if not, the messengers were to withdraw their homage for all the land.

—From the *French Chronicle of London*, ed. for the Camden Soc. by G. J. Aungier, 1844, 57.

IV. *Announcement of Edward's Abdication*

Whereas Sire Edward, recently king of England, of his free will and by the common counsel and assent of the prelates, earls, barons, and other nobles, and of the whole community of the realm, has abdicated²⁴ the government of the realm; and whereas he has granted and wills that the government of the realm should devolve upon his eldest son and heir, Sire Edward, who should govern, reign, and be crowned king; and whereas all the great men have performed their homage [to the said heir]; we proclaim and publish the peace of our said lord, Sire Edward the son. On his part, we command and firmly enjoin each and every one, on pain of disherison and loss of life or members, not to break the peace of our said lord the king; for he is and shall be ready to enforce right for each and every one of the said kingdom in all matters and against all persons, both great and small. So, if any one has some demand to make of another, let him make it by means of [legal] action, without resorting to force or violence.

—From *Foedera*, II, 683.

V. *Early Statutes of Edward III*

(a) Statute the First, 1327.

. . . Wherefore our Sovereign Lord king Edward . . . at his parliament held at Westminster at the time of his coronation . . . upon certain petitions and requests which were made to him in the said parliament, on the matters rehearsed above, provided, ordained and established in the following manner, with the common counsel of the Prelates, Earls and Barons and other magnates, and of the

²³ *Et sey demettre del regne.*

²⁴ *S'en est ouste del gouvernement du roialme.*

Commonalty of the realm, being there present at his command . . . [The first was a pardon for the supporters of Isabella and Mortimer; the second was the annulment of the repeal of the exile of the Despensers, made by "award" of the Peers and of the people and the assent of the king.]

—From *Statutes of the Realm*, I, 252.

(b) Statute the Second, 1327.

. . . at the request of the Commonalty of his realm, by their petitions put before him and his council in the said parliament, by the assent of Prelates, Earls, Barons and other magnates, assembled at the said parliament, has granted . . . the following articles. [The first was the confirmation of Magna Carta.]

—From *ibid.*, I, 255.

(c) Statute the Third, 1327.

. . . [By the king,] to the honour of God and the common profit of the people, by assent of Prelates, Earls, Barons and other magnates and of all the Commonalty of the realm summoned to the said parliament. [The first clause was that Magna Carta and the Charter of the Forest be kept.]

—From *ibid.*, I, 257.

(d) Statute the Fourth, 1330.

. . . the matters underwritten were requested by the Commonalty, and assented and accorded by the king, the Prelates, Earls, Barons, and other magnates of the parliament; which matters the king wishes to be ordered, published and firmly kept in every county of England.

—From *ibid.*, I, 261.

VI. *Edward proclaims his intention of ruling with his magnates and in no other manner*, 1330

The king to the sheriff of York, greeting. Our affairs and the affairs of our realm have been managed in the past to our damage and dishonour and that of our kingdom, and to the impoverishment of our people, as we have clearly perceived for ourselves and as the facts prove.

We have, accordingly, caused several people to be arrested, by our own will and by [the promptings of] our own conscience; that is to say, the Earl of March, Sir Oliver Ingham and Sir Simon Bereford, who have been the prime movers in the said matter [of misgovernment].

And we wish all men to know that in future we will govern our people according to right and reason, as is fitting our royal dignity; and that the matters which touch us and the estate of our realm are to be disposed of by the common counsel of the magnates of our realm, and not in any other manner.

Therefore, we bid you and firmly enjoin upon you, that you will cause this, our intention, to be published throughout your bailiwick, within franchises as well as without, so that the people may be able fully to understand it. . . .

—From *Foedera*, II, 799. Printed from the Close Rolls,
4 Edw. III, m. 20d.

VII. *Errors alleged in the proceedings against Thomas of Lancaster, by Henry of Lancaster, in 1327*

. . . He says that there was error in that, when any liege man of the king is taken in time of peace, for seditions, homicides, robberies, incendiaries and other felonies, and is brought into some court of the lord king concerning some seditions and other felonies charged against him, by the law and custom of the kingdom he ought be arraigned and brought to reply, and hence to be convicted by law etc., before he is adjudged to death. Although the said Earl Thomas, a liege man of the lord King's father, was taken in time of peace and led before the king himself, [i.e. the father of the present king] it was recorded that Thomas was guilty of seditions and felonies contained in the aforesaid record and process, without Thomas being arraigned or brought to reply as is the custom and according to the law. And thus he was adjudged to death without arraignment or response, erroneously and against the law of the land, in time of peace. Whence, since it is notorious and manifest that, during all this time, when it was being established²⁵ that the said Earl had done the aforesaid evils and crimes contained in the record and process, . . . and when he was adjudged to death, it was a time of peace; and especially since during the whole time the chancery and other places of the king's court were open, in which law was wont to be made to all; . . . the lord king ought not to have recorded against the said Earl, nor to have adjudged him to death without arraignment or reply.

It was said also to be erroneous, in that Thomas had been one of

²⁵ *Impositum fuit.*

the peers and magnates of England, and in the great Charter it is contained that no free man shall be taken, imprisoned or disseised . . . except by legal judgement of his peers or by the law of the land. . . .

[Because of these errors, it is "considered by the lord king, the *procures*, magnates, and all the community of the realm, in this parliament, that the said judgement be revoked and annulled."]

—Printed by L. W. V. Harcourt, *His Grace the Steward and Trial by Peers*, 327–9. From Close Rolls, 1 Edward III, Pt. 1, m. 21d.

VIII. *The lords charged to give judgement on Roger Mortimer in 1330*

Wherefore, the lord king charges you, Earls and Barons, the Peers of the Realm, that as this matter chiefly touches him and you and also all the people of the realm, that you make on the said Roger true and loyal judgement, as is fitting to be made on such a one, who is truly guilty of all the deeds above-written, as he [the king] understands, and that the said matters are notorious and known to be true, by you and all the people of the Realm.

The Earls, Barons and Peers examined the articles, returned before the king in the same parliament. They said unanimously, speaking through the mouth of one of them, that all the matters contained in the said articles were notorious and known to them and the people, . . . wherefore, the said Earls, Barons and Peers, as judges of parliament, with the assent of the king in the same parliament, awarded and adjudged that the said Roger . . . be drawn and hanged. . . .

Also, in the same parliament, our lord the king charged the said Earls, Barons and Peers, to give true and loyal judgement, as is suitable, on Simon of Bereford, knight, who aided and counselled the said Roger Mortimer in all the treasons . . . as is a matter known and notorious to the said Peers, as the king understands.

The Earls, Barons and Peers returned before our lord the king in the same parliament, and said unanimously that the aforesaid Simon was not their Peer, whereby they were not compelled to judge him as a Peer of the Realm. But because the matter was notorious and known to all, . . . they therefore—the said Earls, Barons and Peers—as judges of parliament, awarded and adjudged, by assent of the king in the parliament, that the said Simon be drawn and hanged as a traitor and enemy of the king and of the realm. . . .

—From the *Rolls of Parliament*, II, 53.

Chapter Five

THE CRISIS OF 1341

(a) *Some Recent Works*

CLARKE, M. V. "Forfeitures and Treason in 1388," in *Fourteenth Century Studies* (Oxford, 1937).

HUGHES, DOROTHY. *A Study of the Social and Constitutional Tendencies in the Early Years of Edward III* (London, 1915).

LAPSLEY, G. "Archbishop Stratford and the Parliamentary Crisis of 1341," in *E.H.R.*, XXX (January and April, 1915), 6-18, 193-215.

LUCAS, H. S. *The Low Countries and the Hundred Years War* (Ann Arbor, 1929).

PIKE, L. O. *A Constitutional History of the House of Lords* (London, 1894).

THORNLEY, I. D. "The Act of Treasons, 1352," in *History*, VI (July 1921), 106-8.

TOUT, T. F. *Chapters in Medieval Administrative History*, III.

WILKINSON, B. "The Protest of the Earls of Arundel and Surrey in the Crisis of 1341," in *E.H.R.*, XLVI (April 1931), 181-93.

The Chancery under Edward III (Manchester, 1929).

(b) *Introduction to the Documents*

THE crisis of 1341 began when Edward III fled from his creditors in Flanders in November 1340, and unexpectedly landed at the Tower of London. He began a nation-wide investigation into the administration. He dismissed many of his leading officers. He accused the Archbishop of Canterbury, John Stratford, of prime responsibility for the recent failures in the war.¹ This was the one great test of the settlement of

¹ He charged Stratford, in the *Libellus Famosus*, a royal pamphlet (see T. F. Tout, *Chapters*, III, 128), with responsibility for the failure of the campaign of 1340. Elsewhere he wrote to Pope Benedict XII that he believed the archbishop wished him, through lack of money, to be betrayed and killed.

1327-30 which occurred before the declining years of Edward III. It was the one occasion which threatened a revival of the political struggles of Edward II.

Bishop Stubbs did not discern any great conflict of principle in the origins of this crisis. It was, he suggested, due to Edward's difficulties in obtaining money, his lack of success in the war, and (possibly) Archbishop Stratford's opposition to the war itself. Stubbs also discerned the influence of a strong anti-clerical party which, wedded to court extravagance, resented the Archbishop's actions as a reformer of manners.² Other suggestions have been that the crisis was due to Edward's "bid for despotism,"³ and that it was due to friction between household officials and the great ministers "of state."⁴

Lack of military success was certainly the outstanding cause of the crisis of 1340. One of Edward's motives was probably to provide a scapegoat for his partial failure abroad. He cannot have forgotten how much his father had paid for his reverses in Scotland and France. Edward's anti-clericalism was expressed in a famous speech.⁵ The fact that he dismissed his leading clerical ministers and appointed laymen to succeed them, shows that there was substance in it, in spite of the king's own piety. But many clerics retained their offices in the government. Indeed, the king could hardly do without them. At least one of them, William Kilsby, was amongst the king's intimate advisers in November 1340. Leading ministers were again chosen from their ranks, in 1345.⁶ We may perhaps conclude that the anti-clericalism of 1340 should not be exaggerated as a cause of the quarrel between the king and his ministers, though its importance remains very great. It seems to be clear that there were quite a number of causes for the

² *C.H.*, II, 404.

³ T. F. Tout, *Chapters*, III, 126.

⁴ T. F. Tout, *Collected Papers* (Manchester, 1934), III, 232-3, and elsewhere. See Chapter II above. There was also the problem of the composition of the council; *E.H.R.*, XXX, 8.

⁵ From the *French Chronicle of London*, ed. G. J. Aungier (Camden Soc., 1844), 90. The king swore that in future no cleric would be his chancellor or treasurer, or serve in any other great office in his service, but only such persons as he could cause to be drawn, hanged and beheaded if they were attainted of felony.

⁶ See my *Chancery under Edward III*, listed above, 116.

dispute, each of which made its contribution. The one that seems to merit most discussion here, however, is the tendency towards despotism on the part of Edward.⁷ This involves the whole question of the impact of war upon the first great settlement of his reign.

The impact of the Hundred Years War upon the government of England resulted in two conflicting tendencies. One was towards an accentuation of the king's power, but the other was towards an accentuation of the power of the Commons and the Lords. The former can be seen in the Ordinances of Walton, referred to in the Introduction, and in the attitude of the king's advisers in November 1340. The latter can be seen in the demands of Lords and Commons in 1339 and 1340. How far the government at home, in 1340, was "Lancastrian" is a moot question; but John Stratford himself its chief inspirer, *patricius* and *dux* in Edward's absence, almost certainly was; and it has been assumed, in the Introduction, that Stratford set the tone of the government in Edward's absence. This had important consequences when Edward precipitated a crisis in November 1340, and is probably worth emphasizing.

An equal departure from the spirit of 1330 can, in fact, be seen in the actions of both Edward III and John Stratford, when the great quarrel of 1340 had begun. This has not always been recognized, because the archbishop, with great political skill, appealed to the good customs of the past and the sentiments of 1330. He is usually regarded as simply a defender of the ancient rights of church and aristocracy against the ruler;⁸

⁷ A word should be said here about the sources which have been translated. The first is from the pen of Adam Murimuth, the most attractive writer to deal with the crisis. Adam was canon of St. Paul's, a doctor of civil law, and a highly skilled diplomatist. He represents, along with Geoffrey le Baker, the important group of secular clerks who wrote much of the history of this period. The *French Chronicle of London* (Doc. III) has already been mentioned. It is scrappy and uneven; but, about events in London, the writer seems to have been well-informed. A word is said about the petition of the Commons (Doc. IV), later on. The rest of the documents translated are official records, either from the *Rolls of Parliament* or from the *Statutes of the Realm*.

⁸ Stubbs, *C.H.*, II, 404-5, seems to find it hard to pin any general principles on him. T. F. Tout, *Chapters*, III, talks, quite rightly, of high clerical claims and baronial pretensions. But neither Stubbs nor Tout, the two greatest writers on the period, quite explained the importance of this crisis in terms of general principle. Jolliffe, *C.H.*, 392-3, has very little to say about it.

but this probably makes the archbishop less creative and politically formidable than he was. Everything depends, of course, on how much it is possible to read into the archbishop's pamphlets and demands; but when these seem to echo ideas which had been propounded by the magnates or by Isabella and Mortimer, between 1308 and 1330, it seems fair to assume that Stratford was quite conscious of the connection between his ideas and those of earlier reformers, and that he was not entirely averse to meeting Edward's tendency towards autocratic action by an appeal to the radical notions by which the Lancastrians had opposed extreme notions of monarchical power.⁹

The special thing that keeps kings flourishing, he wrote in one of his pamphlets (Doc. II below), is wise counsel. He cited Rehoboam as a warning for those who neglected this precept. He evoked the tragic story of Edward II who had acted against Magna Carta and without the concurrence of his magnates. Edward III also had at one time, presumably in his minority, lost the heart of his people. He had regained it through the efforts of magnates and councillors of the land. He was again acting with unworthy advice. Those who had made themselves governors and councillors, more than their estate warranted, had persuaded the king that what he did would be pleasing to the common people; but it might cause him to lose the hearts of his subjects. He should call to him the wise and great men of his council, without whose aid and advice he could not maintain his estate. He should summon his prelates and lords and allow those who had been accused of not supporting the king's campaign to appear before this assembly, where all questions could be thrashed out. As for himself, Stratford placed himself on the judgement of his peers, saving his order. Elsewhere, he made it clear that this judgement should be in *pleno parlamento*.¹⁰

In these and similar phrases, Stratford opposed the transgression of the ruler by an appeal, not only to the settlement of

⁹ The correspondence between Stratford and Edward has been skilfully analysed by G. Lapsley in the articles cited above.

¹⁰ See my article on the crisis of 1341, listed above.

1330, but also to the Lancastrian traditions of opposition, with their cultivation of the *populus*, their insistence on partnership between king and Lords in parliament, their search for an "impartial" judicial tribunal. The lack of explicit reference to these traditions and ideas need not surprise us. In a controversy with his own ruler, Stratford had to pick his words carefully. As it was, he ran the risk, real or imaginary, of the martyrdom of Thomas Becket. In any case, contemporaries were not in the habit of appealing to large constitutional principles, at least in modern terms. Nevertheless, those familiar with the events of the last two decades may well have perceived in his language some indirect references, at least, to the familiar Lancastrian arguments.

It was Stratford's insistence on a hearing *in pleno parlamento* that expressed the crux of his whole position and showed the continuity of his policy with that both before and after the accession of Edward III. A "trial" in full parliament meant, on the model of 1330, almost unquestionably, judgement of the Lords of parliament; it probably also meant a judgement in the presence of the Commons.¹¹ Thus, by demanding it, Stratford appealed for the support both of the Commons and the Lords. By implication, he suggested that the great political question of his quarrel with Edward was their business and the business of parliament. In effect, he appealed over the king's head to parliament to settle a dispute which Edward had chosen to regard as one between himself and his ministers, which could be settled without reference to the nation at all.

Stratford thus, it may be argued, from the start of his quarrel with Edward, threatened to revive and expand Lancastrian opposition. It is in the light of this possibility, perhaps, that we should consider the next document, the famous protest of the Earl Warenne against the policy of Edward's advisers and the attack on the Archbishop (Doc. III). Warenne showed that

¹¹ The problem of what it meant was discussed at great length in "The Protest of Arundel and Surrey," cited above. The problem of the meaning of *in pleno parlamento* will be discussed in Volume III. Meanwhile, my views on the subject can be read in the *Studies*, cited above, questioned by Miss H. M. Cam, in "From Witness of the Shire to Full Parliament," *T.R.H.S.*, XXVI (1944), 13-37.

the main appeal of the Archbishop had been successful; but that the magnates, whilst attracted by his programme, were not anxious to push his movement of opposition to extremes. He endorsed part, but only part, of Stratford's specific proposals. He reverted strongly to the aristocratic settlement of 1330, and reminded Edward that "only the peers of the land . . . can aid and maintain you." He objected to Edward's "unworthy" advisers. But, by implication, he rejected Stratford's appeal to the "people" and gave no support to Stratford's central contention that it was only in "full" parliament that he ought to answer the complaints of the king.¹²

The Earl of Arundel pursued this line of argument a step further. He proposed that Stratford be allowed to defend himself before the king and the Lords but not, apparently, before the whole parliamentary assembly.¹³ If this defence failed, "we"—either the king and the magnates or the magnates alone—would ordain what was best; but the matter, we infer, should be kept in the select circle of the aristocracy. Under the stress of the crisis, the Lords, led by Arundel and Warenne, extended their judicial functions of 1330 so as to sit in judgement on Edward's political opponents; but they did not go so far as John Stratford. Their Lancastrianism did not go back beyond 1330. At bottom they probably stood for a continuation of the restored monarchy based on aristocratic support.

This mediatory policy was successful in settling the quarrel between Stratford and Edward; but it offered no solution to the constitutional questions raised by Edward's arbitrary actions against his ministers in November 1340. Unless these were to be allowed to constitute a damaging precedent and unless the whole position of Stratford, and not only his extreme views, should be discredited, some attempt would have to be

¹² The extent to which the Earls were in complete opposition to Edward is discussed fully in the articles by Mr. Lapsley and the present writer, listed above.

¹³ In arguing, in "The Protest of Arundel and Surrey" (p. 182), listed above, against the view that Arundel suggested a hearing in full parliament, I suggested that if we would call the assembly in which he spoke by any modern name, we should call it the council. Perhaps it would be better to call it the assembly of Lords.

made to safeguard the ministers, in future, against such attacks. This meant that some, at least, of Stratford's ideas would have to be accepted, and some effort made to apply the ideas of 1330 to the key problem of the bureaucracy. But this was far more difficult than effecting a reconciliation between Edward and Stratford, at least without reviving the extreme notions of the earlier opposition. In any case, these extreme notions were not in the least avoided by one section of the community. On the contrary, they were strongly expounded. And it is perhaps very significant for the future that they were probably expounded not by the Lords as in 1308 and 1311, but by the Commons as in 1376.

If we may trust a very remarkable document preserved in the Chartulary of Winchester Cathedral, the Commons, or at least the *communitas regni Anglie*, which seems to have been the same thing, made some very remarkable and radical proposals (Doc. IV). These proposals were so extreme that some may regard the document in which they were recorded as too suspect to be used. Yet this seems, on the whole, an over-cautious position to adopt. The Chartulary of Winchester contains many valuable and reliable documents; any one of its entries must at least be treated with respect. It cannot fairly be argued that this particular entry is too improbable to be believed. On the other hand, we can see some connection, though admittedly very slight, between its contents and the petition of the Commons in the *Rolls of Parliament* (Doc. V). Hence we should perhaps, pending further information, give the record in the Chartulary a tentative belief.

The main idea it contains was that a committee of peers should supervise expenditure and dispose of all the great affairs of the land.¹⁴ Those who were to counsel the king and govern his realm should be elected in parliament, to reply in full parliament for their tenure of office. Judgements pending

¹⁴ It is possible, though not probable, that they intended the committee to function only in relation to finance; and it is also possible that they asked for concessions, which may have been intended for consideration by a committee of magnates, far more extreme than they actually hoped to achieve. Even if this is the case, their demands remain very remarkable.

through difficulties should come before the said peers; those matters not done before them should be completed at the next full parliament.¹⁵ Those ministers who had done ill in their office should be punished by award of the peers. The insistence on action in "full" parliament is very significant. The powers claimed for the peers were extreme.

In the long process of debate in parliament, these demands were considerably modified.¹⁶ The stages by which this was achieved can be seen in Document V, and need not be illustrated here. In the end, Edward finally conceded (Doc. VI) that Magna Carta should be kept; if anybody should do anything to the contrary, he should be tried by judgement of peers in the next parliament. No peer of the land, officer or other was to be judged because of his office or touching his office, except by award of peers in parliament. Any minister proceeding against Magna Carta should answer in parliament, either at the king's suit or the suit of a party.¹⁷ Ministers were to be sworn in parliament to keep Magna Carta. They were to be replaced, in case of vacancy, with the agreement of the great men closest to the king in the country and of the councillors he should have at hand. The king was to take their office into his hand at every parliament, and they were to be compelled to answer every complaint against them; if attainted there to be punished by judgement of the peers.

However, what Edward did concede was very damaging to the royal power.¹⁸ Stubbs, indeed, saw very little that was dangerous in the king's concessions; they were in line with the principle of freedom and in accord with the legitimate aspirations of the Lords and Commons in parliament.¹⁹ Even Tout, with his deep knowledge of the period, though he

¹⁵ *Au plein parlement ensiwant par assent du parlement.* Note, not *en plein parlement.* ←

¹⁶ The process by which this came about, and the problems connected with it, are too technical to be discussed in this brief chapter. The most authoritative survey, from which I have ventured to depart in some particulars (in *E.H.R.*, XLVI, 181-93), is that by G. Lapsley (*ibid.*, XXX, 6-18, 193-215). ←

¹⁷ Where no remedy or punishment had been ordained before.

¹⁸ G. Lapsley puts it: "To have granted the [first] demands of the peers would have been practically to constitute an irresponsible oligarchy"; *E.H.R.*, XXX, 199.

¹⁹ *C.H.*, II, 410.

remarked on the continuity of ideas between the opposition and the Lords Ordainers, saw in the statute mostly the abandonment by the king of the doubtful advantage of ruling through his household.²⁰

Nevertheless, it seems likely that the movement of opposition to Edward, begun by Stratford, produced a far more serious challenge to the ruler than some modern writers have believed. Even if there had been some support for the judgement of peers in the agreement of 1330, there was none for using judgement of peers as a means of establishing parliamentary control over the ministers of the king. There was no precedent, except in the radical Ordinances of 1311, for exposing ministers to complete accountability in parliament at any suit, for all their actions, whether performed on the king's authority or on their own. This put the ministers, according to the ideas of that time, in an intolerable position; and it accounts fully for their action in protesting that they assented neither to the making nor to the form of the statute, and could not keep it in case it was contrary to the laws and usages of the realm, which they were sworn to preserve (Doc. V). Moreover, lurking behind the new position of the Lords was a danger that they would control not only the king's ministers but also, even more important, his parliament. Above all, there was no support in 1330 for the remarkable initiative of the Commons, their co-operation with the Lords, and the freedom which was accorded them by the latter, to make what may well have seemed dangerous and irresponsible proposals for limiting the supremacy of the king. As Stubbs rightly says,²¹ the proceedings of 1341 "very distinctly mark the acquisition by the third estate of its full share of parliamentary power"; but such an acquisition, it must be remembered, was a complete violation of the spirit if not of the letter of the settlement of 1330.

These considerations help us to understand Edward III's attitude when, in 1341 and 1343 (Doc. VII), he revoked the

²⁰ *Chapters*, III, 134. Of course, Professor Tout, as he carefully pointed out, was primarily interested in the problem of the household.

²¹ *C.H.*, II, 410.

statute, claiming that he had only pretended to agree, and that the statute was prejudicial and contrary to the laws and usages of the realm. He claimed to have the support of magnates and Commons for his action; but as Mr. Lapsley has shown,²² the latter probably resisted to the end, a fact which fits in with the more impetuous part in the crisis which has been assigned to them above.

It is not easy to assess the pros and cons of this rejection. Mr. Lapsley believes that Edward was "quite right to repeal the statute."²³ To Stubbs it was "a piece of atrocious duplicity." It was typical of Edward's incurable levity in constitutional affairs. Even to Tout, Edward was an opportunist. As soon as he had made the concession, he looked round for an "excuse" for withdrawing it. The breaking of a solemn compact between ruler and subjects was, indeed, a dangerous precedent. All government in the long run is impossible without some assurance of good faith. Edward frankly admitted that he had only pretended to agree to the statute; both he and his ministers had, in truth, protested against it. His agreement had been pure expediency, to be nullified—again a very dangerous concept—because opposed to the real wishes of the king.

On the other hand, there are arguments in Edward's favour. There is a possibility that, in annulling the statute, he as well as his subjects had a genuine regard for the need for political unity and the welfare of the country. The king's doctrine of necessity and implied *raison d'état* was probably not so startling to men of that generation as to those of the thirteenth century. The repudiation should perhaps be regarded as, in part at least, a consequence of the weaknesses of the statute and a recognition of the stern political needs of the moment, rather than merely as a consequence of Edward's military ambition and political instability. Much will depend on the view that is adopted of the achievement which the statute represented. To Stubbs, who saw nothing but good in it, its annulment was

²² *E.H.R.*, XXX, 203.

²³ *Ibid.* The best discussion is *ibid.*, 201-2.

bound to seem unpardonable on any grounds. Those who, perhaps wrongly, point to its shortcomings—its impracticability from the point of the civil servant, its threat to political harmony, its implied rejection of the settlement of 1330—are bound to see arguments on either side.

If in this struggle, Mr. Lapsley concludes,²⁴ we applaud the taxpayer for trying to save his pocket, and the peer and the prelate their privilege, we must in common justice equally applaud the king for trying to save his prerogative. These are the best words which have yet been spoken on the subject; but when Mr. Lapsley goes on, epigrammatically, to suggest that Edward did not break the constitution, because there was no constitution to be broken, only precedents pointing in different directions, we must follow him with caution. If the constitution existed at all at this time, he believes, it existed *im Werden*; but that is something which can be said of the English constitution at almost any time. The constitution, as always, was in progress of becoming and contained conflicting precedents; but can we doubt that to contemporaries it had an existence, even if they interpreted it in different ways? Our trouble at any point is to know what customs and ideas were more generally accepted; and perhaps our greatest weakness in this respect, with regard to the struggle of 1340-1, has been a disregard of the generally accepted agreement with which Edward had begun his reign.

The deep, underlying problem which confronted both the king and his opponents has also been brought out very clearly by Mr. Lapsley: "An acute crisis," he writes,²⁵ "had brought men to see that they were bound by two theories which might, and in this case had, come into collision. On the one hand was the permanent law as an imperative whole. On the other hand was the royal authority undefined, except perhaps as consisting of all that had not definitely been taken away from it, and unlimited except by the *lex terrae* and the obligation imposed by the religious sanction of coronation and by the coronation oath

²⁴ *E.H.R.*, XXX, 214-15.

²⁵ *Ibid.*, 206-7.

to guard and observe the *lex terrae*. Who, then, is the judge of what is contrary or conformable to the *lex terrae*? The constitutional experience of six centuries has not produced a wholly satisfactory answer to that question, but it is important to note that the constitutional experience of less than two had sufficed to raise it in an acute form."

There seems to be little doubt as to the truth of this diagnosis. It should be added here, perhaps, that the problem had already been raised, even if not so clearly, as early as the beginning of Edward II's reign, and that the same problem was later to underlie the struggles of Richard II. The crisis of 1340-1 was the link between the one and the other. No satisfactory solution had been found in Edward II's reign and, as we have seen, no satisfactory solution was discovered in 1341. But in both cases the opponents of the king turned towards parliament as the only possible instrument of government in which could be discovered a judge, apart from the king himself, to determine what was contrary or conformable to the *lex terrae*; which meant, in effect, to operate as a tribunal higher even than the king. There is no need to stress the importance of this search, or the difficulty it was likely to encounter in face of the ancient monarchical tradition. It is not surprising that it was contested at every stage by the supporters of the king. The struggles and debates it gave rise to later in the century have already been suggested in the Introduction, and will be discussed in detail below. Meanwhile we may perhaps conclude that the magnitude and stubbornness of this underlying problem go far to explain the failure of the statesmen of 1341 to find a satisfactory and generally acceptable solution. At the same time there is little doubt that their ideas, though largely shelved for the moment in face of national danger, made a most important contribution to the solutions which were to be propounded between 1376 and 1399.

(c) *Documents*

- I. The Crisis of 1341 according to Adam Murimuth.
- II. John Stratford's Letter to Edward III, January 1341.

- III. Protest of the Earl of Surrey according to the *French Chronicle of London*.
- IV. Petition of the Commons in 1341.
- V. Account of events in parliament of 1341 in the *Rolls of Parliament*.
- VI. Statute of 1341.
- VII. Revocation of part of the Statute of 1341.

I. *The Crisis of 1341 according to Adam Murimuth*

In the year of our Lord 1340 . . . the king was in Ghent at the feast of St. Michael with his followers, awaiting the confirmation of the said truce [with the French] and also money from England, which did not come. All the English who were in Ghent with the king believed that the king was going to celebrate Christmas there. But the latter, with a handful of followers, eight in all, pretending that he wanted to take a walk, secretly rode away. He had warned practically nobody amongst his intimates.

He came to Sluys where he embarked. He sailed for three days and nights, and during the night of the feast of St. Andrew, about cock-crow, he entered the Tower of London by water [i.e. the Water Gate]. With him there were the Earl of Northampton, Walter Manny, John Darcy the son, John Beauchamp, Egidius Beauchamp knights, William Kilsby and Philip Weston clerks, and a very few others.

And immediately, at cock-crow, he sent for the chancellor, treasurer and other justices who were then in London. He at once removed the bishop of Chichester [Robert Stratford] from the office of chancellor, and the bishop of Coventry [Roger Northburgh]. He was minded to have sent them to Flanders and put them in pawn there or, if they were unwilling to go there, to have kept them as prisoners in the Tower; but the bishop of Chichester pointed out to him the threat which canon law held for those who imprisoned bishops, and so he let them depart from the Tower.

But the greater judges, namely John Stonore, Richard Willoughby, William Shareshull and especially Nicholas Beche who formerly had been the guardian of his son and of the Tower of London, together with the merchants John Pulteney and William Pole, and the greater clerks of chancery, John St. Paul, Michael Wath, Henry Stratford and Robert Chigwell, with John Thorp from the exchequer and a

number of others—these he caused to be shut up in various prisons. But because this had been done wilfully and *ex capite*, and with a certain colour of anger, they were afterwards freed.²⁶

Also on the king's arrival John [Stratford] Archbishop of Canterbury was publicly defamed, orally, by William Kilsby at the Guildhall London, and afterwards by letters of the king, on the score of ingratitude and other things. Concerning these, he offered to clear himself completely in the next parliament as appears below.

And immediately after his arrival, the king dismissed all his sheriffs and other ministers holding public office from him; and he substituted others for them, even those who were unwilling. He made a certain knight, namely Robert Bouchier, to be chancellor of England, and appointed another treasurer, firstly Robert Sadington and then Robert Parning; and he used the counsel of young men, despising that of the elders.

He decreed that justices should sit in every shire to enquire into the [actions of the] collectors of the tenth, of the fifteenth, and of the wools, and into the actions of all other ministers. And in each shire he ordained one chief justice, namely an earl or important baron, with whom he associated lesser justices. These justices proceeded so sternly and zealously that none escaped unpunished, whether he had conducted the king's business well or ill; so that everybody, without choice—even though not indicted or accused—who wished to escape prison, redeemed himself by an excessive fine. Nor did they permit anyone to purge himself [as to his innocence or guilt].

And because the Londoners would not permit the justices to sit within the city on such an inquisition, against their liberties, the king commanded the justices of the eyre to sit in the Tower of London and there to hold enquiry into the acts of the Londoners. Because the Londoners refused to answer there concerning how far their liberties might be upheld, and could not obtain writs from the king's chancellor to cause them to be upheld, a great tumult was created in the Tower by unknown persons of the community, to such an extent that the justices arranged that they should sit there until Easter.

Meanwhile the king was very annoyed by what had happened and he tried to find out the names and the persons who had created the tumult. When he could not learn the names, but only that they

²⁶ *Sed, quia illud voluntarie et ex capite quodam colore iracundiae factum fuerat, postmodum liberati fuerunt.*

were a crowd of lesser²⁷ persons, protecting their liberties, he recovered his calm and remitted their offence to the community of London. And afterwards the said itinerant justices did not sit in the Tower of London, nor anywhere else that year.

A fortnight after Easter . . . the king held a parliament at London, in which the prelates earls and greater folk, namely the peers and the community of the realm put forward, in agreement, many good petitions for the community of the realm; and especially that Magna Carta and the Charters of the Forest and other liberties of the church should be completely kept; that anybody transgressing them, even though a minister of the king, should be punished; that the greater officers of the king should be elected by the peers of the realm in parliament. The king, supported by²⁸ his "privy" council, long opposed these [requests]. Thus the parliament lasted until the eve of Whitsuntide.

Finally, the king accepted the great part of the petitions; but he would not agree to the appointment and election of his officers. He was willing, in the end, that his officers should swear in parliament to show justice in all their offices; and if they should not do [this] then they should resign their offices in any parliament,²⁹ the third day after the beginning of parliament, and answer all who complained against them, to be punished, if guilty, by judgement of peers. On which, and other matters, a statute was made, sealed with the royal seal.

After that the prelates and others received license to go home; but the bishops of Durham and Salisbury and the earls of Salisbury, Warwick and Northampton, were assigned to hear the replies of the archbishop of Canterbury to the charges against him and to report to the king in the next parliament. And when the archbishop presented himself, ready to show and demonstrate immediately that he was guiltless, the bishops and earls said they could not be free for him at that time; and so the matters remained in suspense.

—From the *Continuatio Chronicarum* of Adam Murimuth,
ed. E. M. Thompson (R.S., 1889), 116-20.

II. *John Stratford's letter to Edward III, January 1341*

"Most gentle lord, please you to know that the most sovereign thing that holdeth kings and princes in due and fitting estate is good and wise counsel. And therefore saith the wise man: 'In multitude

²⁷ *Mediocrium*

²⁸ *Juxta*.

²⁹ *Et si non facerent in quolibet parlamento*.

of counsellors there is safety.' And therefore is it written in the Book of Kings that Solomon, who was the wisest king that ever was, took unto him the most aged men and the wisest of the earth, by whose advice and by his own sense he ever held the land of Israel in quiet and in peace, and moreover all the kings that were round about him altogether at his will. And after his death reigned his son, Rehoboam, who left the good counsel of his father and of the aged and wise men that had been with his father, and did according to the counsel of young men who would fain please him and who knew little; whereby he lost all the land of Israel, save only the twelfth part. In like manner have many kings of Israel and of other lands been brought to trouble by evil counsel. And, sire, let it displease you not, you may remember it in your own time. By the evil counsel which our lord your father had, whom God assoil, he caused peers and other people to be seized, against the law of his land and the great charter. He put some to shameful death, and of others he caused to be seized the goods and what they possessed. Some he put to ransom; and what happened to him for that cause, you, sire, do know. And next, sire, in your own time, you had certain counsellors by whom you nearly lost the hearts of your people. From these God delivered you, as it pleased Him. And then, even till now, by good counsel of the prelates, peers, the great men and wise of the council of the land, your affairs have been brought into such state that you entirely have the hearts of your people who, clerks equally with others, have given you aid, even as you shall have henceforth, or more, as never had king of England. By means of your good council, the help of your people, and the grace which God hath given you, you have had the victory in presence of your enemies of Scotland and of France and of all parts. Thus at this day, honour be to God, you are held the most noble prince of Christendom. And now, by evil counsel, abetted by certain people of this land who are not so wise as were needful, and by counsel of others who seek rather their own profit than your honour or the safety of the land, you begin to seize divers clerks, peers, and other folk of the land. You make suit, quite unfitting and against the law of the land, which you are bound by the oath taken at your coronation to keep and maintain, and contrary to the great charter, against which all who come counter are excommunicate by all the prelates of England, and the sentence confirmed by the pope's bull, which we have by us. Which things are done at the great peril

of your soul and the diminution of your honour. And, sire, although those same men who now make themselves governors and counsellors, more than their estate doth warrant, give you to understand that what you now are doing is and will be pleasing to your common people, know, sire, for certain, and this you will find, that it is not so in the course that is now begun. And assuredly sire we doubt much, if God set not thereto a remedy, that if you follow the same way that you have begun, you may lose the hearts of your people. Your good and righteous enterprise will be so shaken yonder, that you will not have strength to accomplish it. You will give your enemies the power to destroy you and make you lose fair fame and your land, which God forbid. Wherefore, sire, for the salvation of your honour and your land and for the maintenance of your enterprise, be willing to take to you the great and the wise of your land. Act in your affairs by them and their counsels, as heretofore hath been used. Without their aid and counsel you cannot maintain your enterprise nor govern well your land. And, forasmuch as certain who are near to you do falsely charge us with treason and falsehood, therefore they are excommunicate. For such we hold them and, as your spiritual father, we pray that you will hold them for such. Also they say of some others that they have evilly and falsely served you, whereby you have lost the town of Tournay and many other honours that you might have had there. Be willing, sire, if it please you therefore, to cause the prelates, great men, and peers of the land, to assemble in fitting place, where we and others may securely come. And cause, if it please you, to be seen and enquired in whose hands, since the beginning of your war, wools, moneys, and other things whatsoever, which have been granted to you in aid of your war even to this day, have come and have been expended. And [find out] by whose default you thus departed from Tournay. Those which shall be found guilty in any whit before you, as a good lord, make them to be chastised well according to law. In whatsoever concerneth us, we will stand in all points at the judgement of our peers, saving always the estate of holy church, of us, and of our order, as we have written before this time. For God's sake, sire, be unwilling to believe of us and of your good people aught but good, before that you know the truth; for, if folk shall be punished without answer, judgement of the good and of the evil shall be all one. Consider well, sire, your great undertaking, and the strong adversary whom you have for that cause, and your enemies of Scotland, and

the great peril of your land! For if your prelates, great men, and all the wise men of your land were, day and night, of one will, without division, to ordain that which should be best to do in so great matters, there would be enough to think on, to uphold your undertaking, your honour, and the safety of your land. Take it not ill, sire, that we send you so largely the truth; for we are moved to do this by the great affection which we have, and ever shall have, towards you, the safety of your honour and of your land, and also because it belongeth to us, for that we are, all unworthy though we be, primate of all England and your spiritual father. We must tell you and send unto you the things that may be to the peril of your soul and the impoverishing of your land and of your estate. The Holy Ghost keep you, body and soul, and give you grace to have and to trust good counsel, and victory over your enemies. Written at Canterbury, the first day of January, by your chaplain, the archbishop of Canterbury."

—From the *De Gestis Mirabilibus Regis Edwardi Tertii* of Robert of Avesbury, ed. E. M. Thompson (R.S., 1889), 324-7; translated by the same, 327-9.

III. *Protest of the Earl of Surrey in 1341, according to the French Chronicle of London*

Then, afterwards in the second week, the Earl of Warenne came to parliament before the king. Sir Robert Parving, the baron Stafford and Sir William Kilsby and Sir John Darcy were there, and others in no way fit to sit in parliament. The Earl began expostulating as follows: "Lord king, how goes this parliament? Things were not wont to be like this. They are now all turned upside down,³⁰ for those who should be the chief men are shut out, and other unworthy persons are here in parliament who ought not to be at such a council, but only the peers of the land, who can aid and maintain you, sire king in our great need. And, lord king, you ought to think about this." And then Sir John Darcy got up and went out, coily;³¹ and after him Sir William Kilsby and all the others above named, without saying a word. Then the Earl of Arundel stood up and said to the king; "Lord, let the archbishop come in, before you: if he can defend himself against certain accusations made against him, that is good; if not, we will ordain what it is best to do." The king heard him [favourably] and XXXII articles were put into writing against

³⁰ *Tut besturnee en autre manere.*

³¹ *Coyement.*

the Archbishop, who denied them all, saying that he was entirely innocent of every charge made against him.

—From the *French Chronicle of London*, ed. G. J. Aungier, (Camden Society, 1844), 90.

IV. *Petitions of the Commons in 1340*

These were the articles and petitions of the community of the kingdom of England to the Lord King Edward third, in the fourteenth year of his reign in the aforesaid kingdom and in the first year of his reign in the kingdom of France. They were presented and proposed in full parliament at Westminster on the Wednesday after the first Sunday of Lent [March 8]. From these, the Lord Edward expressly conceded and enacted certain articles in the preceding process,³² with the assent of the Prelates Earls Barons and Community.

In the first place, the said community begs that the holy church keep her liberties at all points. And if any extortion or grievances or any other evil be done against the liberty of the holy church, that it be redressed by parliament at the suit of any who wishes to make reasonable complaint. Magna Carta and the Charter of the Forest and all other statutes made up to the present shall be held in all points that will be amended at this parliament.

Also, divers tallages have been granted to our Lord the king in the past, by which the community of his land are so impoverished that they can scarcely live. Which goods have largely failed to reach the lord king, to the great impediment of the king and of his business. Therefore the said community begs that it be enquired, by discussion in his good council, where the said goods have gone, and loyal account be rendered for them. Thus the king can be served with profit for himself and relief of his people; and such punishment [can] be made wherever the evil shall be found, whether amongst the merchants or collectors, and other ministers great or small, whatever their status, who have had to do with the said goods since the tenth year of the reign [January 1336 to January 1337]. Thus the punishment which shall be made may be an example in future. No acquittance shall be made to any of them. And if any [acquittance] be made before this time [i.e. has already been made], then the triennial tax and the wool [which] were granted to our lord the king since his departure overseas shall be repealed and held for

³² *In precedenti processu.*

nought. And the exaction³³ of all the above points shall be made and overseen by certain of the magnates elected and ordained in this parliament by all the magnates of the community.³⁴ Those who are chargeable with this account shall not hold any office until the account has been rendered.

Also the said community begs that all manner of revenues, including taxes, great customs, marriages, escheats and all other kind of revenues arising from the kingdom be reserved to the people; no part is to be assigned elsewhere during his war, to his great assistance and to the relief of his people; and certain peers of the land shall be ordained in this parliament to watch over these things and to ordain, receive and deliver them for the use of the king and for the defence of his land, and especially [to do this] concerning what will now be granted by the community in this parliament. For the said community cannot in future support such charges. All the great business of the land shall be ordained, tried, judged and despatched by the said peers, and by no one else, calling to them judges and others when they please. No part of the aids granted to our lord the king shall be given, assigned or in any way granted if not by ordinance of the Peers, as they will reply in full parliament.

Also the said community begs that between now and the next parliament writs should be sent to all the sheriffs of England to enquire by ancient remembrance³⁵ which lands, which are neither escheats nor purchases of the king, have been given sold or alienated from the crown, in the time when memory runs, since the day of king Edward the grandfather [of the present king: i.e. Edward I]. Thus, in the next parliament, the gifts and sales made during this period shall be judged and tried by parliament; so that the laws which are not reasonable may be repealed for ever; and [so that the lands may be] resealed into the king's hand, and thus the king will be able to live without laying charges on his people.

Also the said community begs that, as our lord the king is quite ready to do and . . .³⁶ he will ordain, that such people be ordained to counsel him and to govern his realm, without consideration for their bodily labour or for any other inconvenience,³⁷ as are good

³³ *Exacion*: execution?

³⁴ *Partouz les grauntz de la commune*.

³⁵ *Par auncienz remembrauncez*.

³⁶ *Et adeste graunge soen bon conseil*. I am unable to translate this phrase.

³⁷ *Saunz aver regard au travail de soen corps ou a nulle autre meschief*. I have made this refer to "such people" and not to the king, despite the "*soen corps*."

and loyal men of the land, and none other. [And they shall be] elected in this present parliament, and from parliament to parliament; and they shall watch over and govern³⁸ the business of the land as is stated above,³⁹ in such manner that they will be willing to reply in full parliament [for their acts]. Thus the said Peers or some of them, or those who are appointed by their common consent to reply,⁴⁰ can continually supervise⁴¹ the business of the king and of the realm in the above manner. Thus the judgements which are pending in any of the courts by the difficulty of getting judges [to hear them], and [thus] the case and the rolls together with the judges of the courts shall be brought before the said Peers and determined.⁴² That which is not disposed of before them shall be completed in the next full parliament by the assent of parliament, so that the parties who plead shall not be delayed or in cases disherited by the case or by differing opinions of the judges.⁴³ The said Peers shall have full power whenever they are in session in the above manner to call to account all the ministers of the king, justices, barons and clerks of the exchequer and clerks of the chancery and all other ministers, concerning their conduct,⁴⁴ both at the suit of the said party and at the suit of the king, by inquisition taken before them: so that any who are attainted of any offence or have taken any illegal [payment] for discharging their office shall be duly punished by the judgement of the said Peers; and that [business] which is not completed before them shall be completed at the next parliament. And let it be ordained by parliament that such ministers have sufficient fees from the king, so that they cannot on this account excuse themselves for taking anything to the hurt of the people. No one who is chief justice of the king's court shall be assigned as justice to take assizes in the country, nor shall have power by [letter] patent except in his chief court itself; evil would come of this since he would not be willing to reverse his own judgements. All the justices, clerks of the chancery, barons of the exchequer and all other ministers of all courts shall be sworn to do

³⁸ *Et voillent et tiegnent.*

³⁹ *Come desaz est.* The statement obviously comes "above."

⁴⁰ I have omitted *et* after "reply."

⁴¹ *Scer sur.*

⁴² *Les juggementz qe sont pendantz en nulle des places par difficulte en awer des justices et qe le cas et les roubles soient faitz venir ou les justices des places devant ditz Piers et mys en certain.*

⁴³ *Les parties qi pleident ne soient deslaiez ne en cas desheritez par la cause ou contrariouse opinion des justices.*

⁴⁴ The transcriber has rendered this word *poort*.

right to all without delay and without taking anything from the parties to discharge their duty; and this oath shall be [made] before the Peers of the land and a pronouncement shall be ordained in parliament against those who shall be found guilty of such offence. No process of pleading shall be discontinued in any court by default of a letter or of a syllable; no petition shall be granted against the ancient law of the land except by judgement of the said Peers; and no writ shall be granted in future that is called "Non obstante."

—From the *Chartulary of Winchester Cathedral*, edited in English by A. W. Goodman, (Winchester, 1927), 131-3. A summary of the document is printed *ibid.*, 134-5.

V. *Account of the events of the parliament of 1341 in the Rolls of Parliament.*

Also, it is to be remembered that, on account of debates arising in connection with certain articles which the lords and commons of the land asked of our lord the king, the parliament was continued day after day from the said Thursday until the next Thursday following. On which Thursday a bill was brought in parliament by the lords of the land, containing certain requests which our lord the king graciously agreed to, as is more fully set forth below.

And whereas, among other matters contained in the petition of the lords, it was provided that peers of the land, whether officials or others, should not be held to answer concerning trespasses with which they had been charged by the king, except in parliament, it was the king's opinion that such provision would be improper and opposed to his rightful estate. Wherefore the said lords prayed the king to agree that four bishops, four earls, and four barons, together with certain men skilled in the law, should be chosen, to consider in what cases the said peers should be held to answer in parliament and nowhere else, and in what cases they should not be, and to report their advice to him. To do this [the following men] were elected . . . Which twelve men reported their advice in full parliament on the Monday next following, in a schedule which is transcribed in this form . . .

Also they presented, before this same Monday, certain petitions affecting all the lords and commons of the realm, a copy of which is as follows: . . . That it may please his most high lordship . . . to command that the said Great Charter, together with the other ordinances and statutes made through great deliberation, shall be

observed, maintained, and enforced in all particulars; and that the aforesaid persons who have been deprived as stated above, shall be fully liberated and restored to their benefices, lands, tenements, possessions, goods, and chattels, so that each may be lawfully tried according to his condition, without recourse in the future to such actions against the law and the tenor of the Great Charter and all the other ordinances and statutes.

Also, that the chancellor, the treasurer, the barons, and chancellor of the exchequer, the justices of both benches and all other justices whatsoever, the steward and chamberlain of the king's household, the keeper of the privy seal, and the treasurer of the wardrobe shall, whenever they are installed in office, swear to maintain and keep without infringement the law of the land and the provisions of the Great Charter and of the other statutes made by the assent of the peers of the land. . . .

Also, the lords and commons of the land . . . pray that certain persons shall be deputed by commission to audit the accounts of all those who have received the wool for our lord the king or the other aids granted to him; and likewise of those who have received and spent his moneys both beyond the sea and here, as well since the beginning of the war as at present; and that the rolls, memoranda, obligations, and other records made beyond [the sea] shall be delivered to the chancery, to be enrolled and recorded, as should be done at such time. . . .

Also, whereas many evils have arisen through bad councillors and ministers, the lords and the commons pray that it may please the king to ordain by the advice of the prelates, earls, and barons, that he will appoint in parliament the chancellor, the chief justices of both benches, the treasurer, the chancellor and the chief baron of the exchequer, the steward of his household, the keeper of the wardrobe, the comptroller, a clerk fit to keep his privy seal, and the king's chief clerks of the common bench. And this shall henceforth be done in the case of such ministers whenever there is need, and they shall swear before the peers in parliament to observe the laws, as stated above, and this according to the ordinances previously made in such connection. . . .

And they besought the king that he would graciously make those concessions. And our lord the king, having deliberated on the matter contained in the same petitions, had certain responses made to the same petitions. When these responses, together with the

aforesaid petitions, were reported in full parliament, before the king and the lords and commons of the realm on the next Wednesday following, it was the opinion of the said lords and commons that the said responses were not so full or sufficient as was proper. Wherefore they besought the king that he would please to add an amendment. And our lord the king, yielding to their prayer, agreed with them that four prelates, four earls, and four barons, together with other men skilled in the law, should be assigned to review the said petitions and responses, and to report their advice to the king. And [the following men] were appointed . . .

And on the same Wednesday the said archbishops and other prelates brought certain petitions before the king in his said parliament, whereof a copy is as follows. [Then follows the petitions of the clergy, and the king's reply to the clergy and the lords.]

Responses to the commons: As to the first article, it is the will of our lord the king that the Great Charter and other statutes shall be observed in all their particulars. And he wills and grants for himself and his heirs that, if any person does anything in the future contrary to the Great Charter, the statutes, or the rightful laws, he shall answer in parliament, or wherever else he should answer under the common law, as stated above. . . . And as to the oaths of ministers, it pleases the king that his ministers shall be sworn according to the form of the petition. . . .

Also, as to the second article—that is to say, with regard to the auditing of accounts from those who have received the king's wool, other aids, etc.—it pleases the king that the matter shall be attended to by good men deputed for the purpose, provided that the treasurer and the chief baron [of the exchequer] are added to them. And it shall be done in this case as has been ordained on previous occasions; and the lords [of the commission] shall be elected in this parliament. Furthermore, all rolls, memoranda, and obligations made beyond the sea shall be delivered into the chancery. . . .

It pleases the king that, if one of the king's great officials named in the petition is removed from office by death or other cause, he will secure the agreement of the lords who may be found nearest in the country, together with [that of] the good council which he shall have about him, and will place another fit man in the said office. And [such appointee] shall be sworn at the next parliament in accordance with the petition. And at every parliament their offices shall be taken into the king's hands and they [shall be held] to

answer to those who may see fit to complain against them. And if complaint of any misdeed is made concerning any minister, and if he is thereof convicted in parliament, he shall be removed and shall be punished by the judgement of the peers, and another fit man shall be appointed to that [office]. And in such matters the king without delay will have execution pronounced and carried out according to the judgement of the peers in parliament.

It is to be remembered that, upon the aforesaid responses, as well to the petitions of the lords as to those of the commons and of the clergy, the statutes hereafter written were made by the said lords and commons and shown to our lord the king, together with certain conditions that the lords and commons asked of the king, for the grant made to him of 30,000 sacks of wool in lieu of the ninth sheaf, lamb, and fleece of the second year. Which statutes and conditions were then read before the king. And the chancellor, the treasurer, certain judges of both benches, the steward of the king's household, the chamberlain and various others were sworn on the cross of Canterbury to hold and keep those [enactments] in so far as pertained to them. But the said chancellor, treasurer, and certain judges protested that they assented neither to the making nor to the form of the said statutes, and that they could not keep them in case the said statutes were contrary to the laws and usages of the realm, which they were sworn to preserve. And afterwards the same statutes and conditions were sealed with the king's great seal and delivered to the lords and the knights of the shires. . . .

—From *Rot. Parl.*, II, 126–31.

VI. Statute of 1341

First, it is accorded and assented that the freedom of the holy church, and Magna Carta and the Charter of the Forest, and the other statutes made by our sovereign lord and king and his predecessors, by the peers and by the commons of the land, for the common profit of the people, be firmly kept and maintained in all points. And if anything be from henceforth done against Magna Carta and the Charter of the Forest, it shall be declared in the next parliament and it shall be duly redressed by the peers of the realm. And if anybody, of whatsoever conditions, do anything to the contrary, he shall stand to the judgement of the peers in the next parliament, and so from parliament to parliament, as well as franchises used as of those which shall now be granted. And the franchises

granted by our sovereign lord the king or by his predecessors, to the holy church, to the peers of the land, or to the city of London and other cities and boroughs and to the Cinq Ports, or to the commons of the land, and all their franchises and free customs shall be maintained in all points; and nothing shall be done to the contrary. And the writs demanded so as to have allowance of charters and of franchises and of customs and of charters of pardons concerning debts and all other things granted by the king and by his ancestors before shall be freely granted without disturbance, before all manner of justices or other ministers, where it is necessary to have allowance; and they shall be quit at the exchequer or elsewhere.

Also, whereas before this time peers of the land have been arrested and imprisoned, and their temporalities, lands and tenements, goods and chattels have been seized into the king's hands, and some have been put to death without judgement of their peers, it is accorded and assented that no peer of the land, either officer or other, shall be brought to judgement, to lose his temporalities, lands, tenements, goods or chattels, or be arrested imprisoned outlawed or exiled, or be forejudged or put to answer, or be judged, because of his office, or because of things touching his office, or for any other cause, except by award of the said peers of parliament. Saving always to our sovereign lord the king and to his heirs, in other cases, the laws rightfully used by due process, and saving the suit of parties. And if perhaps any peer will willingly answer elsewhere and be judged, other than in parliament, that shall not turn to the prejudice of other peers, nor to his own prejudice in any other case. But if any peer be a sheriff or farmer of a fee, or has been an officer or has received money or other chattels belonging to the king, so that because of this office or receipt he is bound to render account, he shall account by himself or by his attorney in the accustomed places. And the pardons made in parliament before this time shall hold their force.

Also, because the points of Magna Carta are blemished in several ways, and are not so well observed as they ought to be, to the great peril and slander of the king and to the damage of his people, especially since clerks, peers of the land, and other free men, are arrested and imprisoned and deprived of their goods and chattels without being appealed or indicted and against whom no suit of party has been affirmed, it is agreed and assented that in future such things shall not be done. And if any minister of the king, or any

other person of whatsoever condition do or proceed against any point of Magna Carta, or against other statutes or the laws of the land, he shall answer in parliament, either at the king's suit or at the suit of the party, if no remedy or punishment was ordained before this time, whether he has acted by the commission or commandment of the king or by his own authority; notwithstanding the ordinance made before this time at Northampton, which is repealed and utterly annulled in this present parliament by the assent of the king, the prelates earls and barons and the commonalty of the land. And the chancellor, treasurer, barons and chancellor of the exchequer, the justices of the one bench and of the other, the justices assigned to the country, the steward and chamberlain of the king's household, the keeper of the privy seal, the treasurer and controllers of the robe, and those deputed to be near the king's son, the duke of Cornwall, shall be sworn now in this parliament and in future at all times when they assume office, to keep and maintain the privileges and franchises of the holy church and the points of Magna Carta and the Charter of the Forest, and all other statutes, without breaking any point.

Also, it is agreed that if any of the aforesaid officers or the controllers or chief clerk of the Common Bench or the King's Bench, be removed from his office by death or from any other cause, our sovereign lord the king shall place another suitable person in his office, with the agreement of the great men who shall be found closest to him in the country, and whom he shall summon to him, and by the good councillors whom he shall have about him. And in every parliament, at the third day, the king shall take into his hands the offices of all the aforesaid ministers; and they shall remain there for four or five days, except for the offices of the justices of either Bench, the justices assigned [to the country] and the barons of the exchequer; so that these officers and all other ministers shall be compelled to answer every complaint; and if default be found in any of the said ministers, by complaint or in any other manner, and if he be attainted of it in parliament, he shall be punished by judgement of the peers, and he shall be removed from office and another suitable person shall be put in his place. And on such a person our sovereign lord the king shall cause [the judgement] to be pronounced and executed without delay, according to the judgement of the said peers in parliament.

—From *Statutes of the Realm*, I, 295; translated *ibid.*, and Adams and Stephens, *op. cit.*, 106–8.

VII. *Revocation (1343) of the Statute of 1341*

. . . Also, it is to be remembered that on the next Wednesday—namely, the last day of April—our lord the king and the archbishop aforesaid came into the Painted Chamber, together with the bishops . . . and the earls . . . and the other lords and commons there assembled. And the reasons for the summoning of parliament were explained to them by the chancellor of our lord the king in the manner following. . . Whereupon the said prelates and lords were charged to meet by themselves in the White Chamber until Thursday, May 1, in order to treat, consult, and agree among themselves as to whether or not our lord the king should send messages to the court of Rome, setting forth and explaining his rights there before the said holy father the pope, as aforesaid. And in the same way the knights of the shires and the commons were charged to meet in the Painted Chamber in order to treat consult and agree among themselves on the same matter, and to report their answer and assent in parliament on the said Thursday. . .

Also, it is granted and agreed that the statute made at Westminster on the Quinzime of Easter, in the fifteenth year of the reign of our lord the king, shall be entirely repealed and annulled and shall lose the name of statute, as being prejudicial and contrary to the laws and usages of the realm and to the rights and prerogatives of our lord the king.⁴⁵ But because certain articles were included in the same statute which are reasonable and in accord with law and right, it is agreed by our lord the king and his council that such articles and the others granted in this present parliament shall, by the advice of the justices and other learned men, be made into a new statute and held forever. . . .

—From *Rot. Parl.*, II, 135-9. The letter close of October 1341, to the same effect, is in *Statutes*, I, 297; printed by Adams and Stephens, *op. cit.*, 108-9.

⁴⁵ The Statute said: "Certain Articles expressly contrary to the Laws and Customs of our Realm, and to our Prerogatives and the Rights Royal [which] were pretended to be granted to us by the manner of a statute."—*Quidum articuli, legibus et consuetudinibus regni nostri Anglie ac juribus et prerogativis nostris regis expresse contrarii, pretendanter per modum statuti per nos fuisse concessi*. The *expresse contrarii* may perhaps be taken to refer particularly to the Statute of York.

Chapter Six

THE GOOD PARLIAMENT OF 1376

(a) *Some Recent Works*

- ARMITAGE-SMITH, S. *John of Gaunt* (Westminster, 1904).
- BAILEY, C. C. "The Campaign of 1375 and the Good Parliament," in *E.H.R.*, LV (July 1940), 370-84.
- CLARKE, M. V. "The Origin of Impeachment," in *Fourteenth Century Studies*, ed. L. S. Sutherland and M. McKisack (Oxford, 1937), 242-72.
- GALBRAITH, V. H. "Thomas Walsingham and the St. Albans Chronicle," in *E.H.R.*, XLVII (January, 1922), 12-30.
- PLUCKNETT, T. F. T. "The Origin of Impeachment," in *Trans. Royal Hist. Soc.*, XXIV (1942), 47-71.
- "The Rise of the English State Trial," in *Politica*, II (December 1937), 542-59.
- POLLARD, A. F. "The Authorship and Value of the *Anonimale Chronicle*," in *E.H.R.*, LIII (October 1938), 577-605.
- RESNECK, S. "The Early History of the Parliamentary Declaration of Treason," in *E.H.R.*, XLII (October 1927), 497-513.
- STEEL, A., *Richard II* (Cambridge, 1941).
- TOUT, T. F. *Chapters*, as above, Vol. III.
- "Parliament and Public Opinion, 1376-1388," in *Collected Papers* (Manchester, 1932), 173-90.
- WILKINSON, B. *Studies*, as above.
- Chancery under Edward III*, as above.
- "Tendencies in Fourteenth-Century constitutional Development," in *Report of the Annual Meeting of the Canadian Historical Association, 1946* (Toronto, 1947), 18-29.
- "The 'Political Revolution' of the Thirteenth and Fourteenth Centuries," in *Speculum*, XXIV (October, 1949), 502-9.

(b) *Introduction to the Documents*

THE actions of the Good Parliament began a new chapter in the history of the fourteenth century, which was to end

only with the death of Richard II. The deeper causes of this have been touched on in the Introduction. Here it may be sufficient to say that, when the Lords and Commons finally broke the alliance with the Crown which had sustained the Hundred Years War, they reverted to, and profited by, ideas and movements of 1330 and 1341. They developed the "coalition" of Lords and Commons, judicial functions in parliament and the responsibility of the king's ministers to the nation. They advanced towards a new and revolutionary concept of parliament as being represented by the Commons and the Lords. Impeachment provides the key to these ideas and changes, and therefore must be discussed at considerable length.

The essence of Impeachment was, as it has always been considered, accusation by the Commons and judgement by the Lords. The Commons, it is said, made their accusation in parliament against some important personage much as if they were the presenting jury in a court leet; the Lords sat as the suitors of a seignorial court, under the presidency of the Steward or Chancellor. These attributes of Lords and Commons were very old, but Impeachment itself came comparatively late. It was first used against Latimer, Lyons and others, in the Good Parliament. How it came about is still a considerable problem. Stubbs did not discuss its antecedents. Tout seems to have been content to say that it was "devised." Miss Clarke and Professor Plucknett, who have recently carried out important research, have concentrated on the question of procedure. Their assumption has been, apparently, that in 1376 the court of parliament was already in existence. The only real problem was how to get a collective accusation by the Commons against Latimer heard in it, before the assembly of Lords.

The answer, according to the former, was by the use of indictment against the offenders. This replaced the traditional petition to king and council for remedy of wrong. Petition asked for a favour and could be accepted or rejected. Indictment was a legal process taken over from Common Law and

demand a trial of the offenders as of right. Thus, the Commons insisted on a Common Law procedure in the court of parliament. "The Good Parliament," Miss Clarke wrote,¹ "broke through the encirclement of the statutes and achieved the transition from procedure by petition, with all its implications of grace and favour, to procedure by indictment, which is an assertion of right."

Professor Plucknett rejected Miss Clarke's hypothesis: "The attractiveness of this theory," he wrote, "and its currency during the last three hundred years, have concealed from us the fact that it rests upon no evidence whatsoever."² But he still believed that procedure offered the key to understanding the origins of Impeachment. In place of Miss Clarke's indictment, he put forward another legal procedure taken from Common Law, namely the use of notoriety. Notoriety had been used at Common Law to take the place of the formal indictment or appeal by an individual. It had been established in legal proceedings, on one or two occasions before 1376, by the "clamour of the people," expressing itself in "bills" put forward by groups or individuals. Trial had followed the establishment of notoriety, just as it would have followed an appeal. This process, Professor Plucknett suggested, was transferred in 1376 to the "larger stage of parliament." Instead of notoriety being established by the commons of various counties, it was now established, in parliament, by the clamour of the Commons as a whole. Thus the Commons in 1376 found a method by which they could get their accusations against Latimer and others heard in parliament; by which, indeed, on the analogy of the Common Law procedure, they could demand that their accusations be heard.

This theory may, by implication at least, be thought to run counter to that offered in my *Studies*. There, the essential problem was not considered to be that of procedure. The Commons probably began their attack by the ancient method of petition. They may have used notoriety to establish the

¹ *Fourteenth Century Studies*, 265.

² In the article cited above, 50. I had questioned the theory in my *Studies*, 88.

truth of their accusations; but there was nothing very exceptional in this. Notoriety had been used in similar trials as early as the reign of Edward II. There was, indeed, a difference, in that notoriety had now been "transferred" to the stage of parliament; but it was the parliamentary setting which was the important ingredient, making Impeachment the great innovation that it was. The real problem confronting the Lords and Commons in 1376, it was suggested, was not to devise any new procedure, but to get whatever procedures they used accepted in the full assembly of parliament.

It may, however, be argued that there is value in both these methods of approach. The use of notoriety will explain the wording of passages below which record that Latimer was "impeached and accused by clamour of the Commons"; that he and Lyons were accused of "notoriously accroaching royal power"; and that Adam Bury was "impeached by clamour of the Commons." And Professor Plucknett's theory will show the link between Impeachment in 1376 and the use, in 1341, of bills from local communities in the trial of Willoughby, and of articles introduced into the Commons, by John Stratford's enemies, to show the clamour of the people.

The approach in my *Studies*, on the other hand, may help to explain the use that was now made of notoriety in parliament—possibly a more revolutionary use than Professor Plucknett's theory might lead us to believe. Notoriety was, at least in Edward III's reign, the instrument not of the Commons but of the king. It was the king who had used it in 1330 and 1341. Its real significance in 1376, it may be argued, lay in its employment by the Commons without direction by the monarch. This constituted an extension of its previous use which may have its origins in the reign of Edward II. It is this extension which seems to need explanation; and it seems doubtful if such an explanation can be found in any normal or traditional attributes of Commons and Lords.

It should be sought, on the contrary, it seems likely, in the ideas behind the movements, discussed in previous chapters, aimed at political trials in parliament. The greatest single

difference between the ideas of 1308-21 and those of 1376 seems to lie in the substitution of the collective action of the Commons for the earlier demands of the Lords backed by threat of force. Through this action of the Commons, the political trial was finally established as a parliamentary procedure, depending not on a feudal right of resistance, but on the "rights" of the Commons and the Lords. This suggestion is based on an assumption of continuity in the ideas behind the political movements of the fourteenth century which is still obviously a matter for discussion; but it is probable that some evidence to support it is to be found in the chapters above.

Three documents are translated below. The first is by Thomas Walsingham. The second is by the unknown writer of the *Anonimale Chronicle*. Until the discovery and publication of the full text of the latter, by Professor Galbraith, the former was the only detailed account available for historians; and that helps us to understand why the problem of this important crisis is still so obscure. The third document is the official story of the Good Parliament given in the *Rolls of Parliament*.

Thomas is the finest historian of the later fourteenth century, and the last great representative of the famous history school of St. Albans. His *Chronicon Angliae* is a spirited account of the events of the Good Parliament, though he was bitterly prejudiced against John of Gaunt. At least he was very well informed, and his prejudice does not make him valueless to the constitutional historian. In matters of background and procedure, Thomas was likely to colour his facts, but not so likely to invent them. Perhaps he has been underrated by constitutionalists, though his story is admittedly difficult to assess. We may begin by a few comments on his work.

If we can believe Thomas (Doc. I), the attack by the Commons on Latimer was no ordinary petition for redress of grievances. It was a direct attack, in full parliament, on the king's ministers, taken after consultation with the Lords, and supported by an implied threat to withhold supplies. This fact is corroborated by the second chronicle (Doc. II). The mere expression of grievances would probably not have caused

a great crisis, except for the methods adopted by the Commons to get their grievances redressed. The outstanding features of these seem to have been, in the early stages, firstly the collective action of the Commons through their speaker; secondly, their "coalition" with the Lords; thirdly, their insistence, in fact if not in words, on a trial *in pleno parlamento*.

In this last aspect the crisis was in some sense a continuation of the crisis of 1340-1. Sir Peter de la Mare waged a battle very similar to that which John Stratford had waged. The latter had probably wanted a hearing before a parliament which included the prelates and Commons. The former wanted a hearing in a parliament including Commons and Lords. The essential aim, in both cases, amounted to a hearing in full parliament. Edward III had opposed this in 1341. John of Gaunt opposed it in 1376. "Whatsoever," he promised in 1376, "they [the Commons] thought ought to be corrected, they should set forth and he would apply the remedy they chose" (Doc. I), but the Commons insisted on deposing against Latimer in parliament. Sir Peter addressed the "Lords and magnates." He attacked the king's ministers as disloyal to the kingdom as well as to the king. It seems probable that his great design was to make his attack a business of parliament, not one only between the Commons and the Crown.

Thus the crisis of 1376, as portrayed by Walsingham, seems to represent one more attempt to use the authority and procedure of parliament for great political trials. The immediate issue between John of Gaunt and Peter, we may perhaps guess, was not whether the Commons had a right to initiate these proceedings, or what particular form of procedure should be adopted, but whether the trial of the king's ministers, on accusations of grave delinquency in their duties, was the concern primarily of the king (or his lieutenant) and the council, or whether it touched the welfare of the whole kingdom, and was therefore the concern of all the assembly of parliament, representing in the words of Chief Justice Thorpe, "the body of all the realm." This question was not stated by Thomas of Walsingham, who was, in any case, not greatly concerned

with constitutional issues; but it may fairly, perhaps, be deduced from the quarrels between Sir Peter and John of Gaunt, translated in the documents below. John tried twice to finish "elsewhere" the proceedings which Peter began in parliament. Sir Peter consistently, it seems likely, addressed his accusations to the Lords as well as to John of Gaunt and his advisers. In the end, Latimer was declared infamous "by common decree of parliament."³

The second chronicle translated below is the *Anonimalle Chronicle* (Doc. II). The writer of this was probably a monk of St. Mary's Abbey, York,⁴ but he clearly had access to first-hand information about the Good Parliament. He may have been an eye witness, or got his information from an eye-witness. It has even been conjectured that he was an ex-clerk of chancery (John of Scarborough) who had had access to all the official records and could speak in the most exact official language of the age.⁵ He gives exciting and colourful details of the debates in the assembly; details which, so far as we can check them, are correct. This is the first time in the Middle Ages that we have had such an authentic description of the discussions in parliament. Unfortunately, considerations of space prevent it from being given in full below.

The *Anonimalle Chronicle* seems to agree with Thomas that the Commons addressed their complaints to John of Gaunt and the "council of parliament." The writer also, and somewhat incidentally, shows that the Commons in the early proceedings, spoke both before the council of parliament and before the Lords. He does not, any more than Thomas, suggest what were the implications of the new Impeachment, but he goes beyond Thomas in showing how the opposition of John of Gaunt was finally overcome. It was by a joint session of Lords and Commons, in which the latter asked for a reforming council, a request which the magnates promised to bring before the king.

³ And also, in another place, "by parliamentary judgement"; *Chron. Ang.*, 102.

⁴ Galbraith in *Anonimalle Chronicle* (Manchester, 1926), Introduction; but cf. J. G. Edwards' interesting speculations in *E.H.R.*, XLIII (January 1928), 103-9.

⁵ A. F. Pollard, "The Authorship and Value of the *Anonimalle Chronicle*," as listed above.

They did not ask for the reforming council to take over the trial of Latimer. Though the councillors were to "redress that which has been ill done and used before," they were only to hear and amend "by their good counsel and advice" the trespasses which had been shown before, presumably those of Latimer and Lyons. This evidence regarding the functions of the council would not, in itself, be conclusive; but we know from the *Rolls of Parliament* (Doc. III) that the council was not, in fact, given power to try Latimer; and under the circumstances this makes it very likely that no such power was asked for. Thus, it seems likely that the Commons, by 24 May at least, made it clear that they regarded their proceedings as being not only before the Lords, but also before "parliament." They made this very clear by addressing the resumed proceedings "in parliament" to the Lords. The upshot of all their efforts was a trial in parliament with the judgement of the Lords, and we have therefore some good grounds for believing that this is the substance of what they had been aiming at all along. They had desired a reformed council to overcome John of Gaunt's opposition, not in order to change the nature of the procedure they had begun.

The third source of information is the official source, the *Rolls of Parliament* (Doc. III). These seem to agree in all particulars with the chronicles. The Commons showed their complaints to the king and to the Lords of parliament. The *Rolls* probably misplaced the election of the reforming council, giving the impression that it took place at the very beginning of parliament;⁶ but as we have seen, the effective proceedings against Latimer and others only began after the council had been appointed on 24 May. After this, the *Rolls* record, the proceedings were in parliament, dominated by the Lords. Latimer was "impeached and accused" by the clamour of the Commons. Discussions were "in full parliament as otherwise before the prelates and Lords alone." He was found guilty in full parliament and adjudged "by the prelates and Lords in

⁶ This question has already been discussed in my *Studies*, 95-6. Perhaps there is no need to discuss it here.

full parliament." The *Rolls* leave little doubt that the business of these political trials was parliamentary business; that the judges were the Lords; and that the important business took place in full parliament. The record bears out the evidence of the chronicles. The triumph of the policy of Lords and Commons was incorporated in the official account.

This policy, it seems likely, was based on something more than a new legal procedure. It was made possible by changes in the structure of politics and of parliament, discussed in my *Studies*, without which it is hardly likely that the Impeachment of 1376 could have occurred. This procedure was made possible, in the first place, by the growth in importance of Lords and Commons and a corresponding diminution in the position of the council in parliament. The council, as the body of the king's advisers, had still dominated parliament at the beginning of the fourteenth century. Even the radical opponents of Edward II had not directly attacked its position there, though they may have indirectly. Indeed, this position may have been one of the obstacles which defeated the aim of the magnates in the early political trials. But the council had plainly lost its commanding position in parliament by 1376.⁷ This was one of the many reasons why the Lords and Commons of 1376 succeeded where their predecessors of 1308 and 1321 had failed.

Another reason was the growth of the power and claims of the Lords and Commons, not only relative to the council but also relative to the king. It was this which enabled them to begin eliminating the king's council from parliament. Impeachment was impossible so long as the Lords and Commons met, in the spirit of the Statute of York, to give or withhold assent to the king's proposals. It was impossible until both "houses" had acquired initiative and self-reliance and until the latter had cohesion enough to develop the office of Speaker. Impeachment was, at bottom, an assertion of the power of Lords and Commons against the ruler. It depended on a

⁷ This change is discussed in my *Studies*, 100-6.

change in the relations of ruler and community; on the depression of the former and the exaltation of the latter which transformed the dependence of the Lords and Commons of Edward I's reign into a near equality. This, in turn, involved changes far beyond the structure of parliament. It involved, for instance, the "coalition" of Lords and Commons which has already been referred to above.

Impeachment depended, in the third place, on a development of the Lords as judges of parliament. Without this prior development, it is unlikely that the Lords and Commons could have moved suddenly into a position where, in effect, they tried to set up a new tribunal of justice in the state.

The essence of this new tribunal finally lay in the claims and attributes of both Lords and Commons; hence, in one sense, the really important feature, probably dating in its origins to the political trials of Edward II's reign, was the central and essential position accorded in parliament, not to the monarch, but to the "estates." We can see in this, perhaps, a germ of the idea that parliament actually consisted not so much of the king treating with his subjects, as of the Lords and Commons assembled to do business with the king. This, after all, is what was to give its real significance to the doctrine of a High Court of Parliament enunciated in 1388.

Thus, it seems probable, Impeachment in 1376 must be understood in its historic setting. It must be related to political movements before and after, and to the development of the High Court of Parliament. Perhaps, in regard to this last, its real significance lay in the challenge that it offered to the king's traditional control over what *Fleta* had called his court in his council in his parliaments; and the question of this control was to lie at the heart of the political struggles of the reign of Richard II. The true significance of the challenge was obscured by personalities, circumstances and, possibly, from expediency; but it is hard to believe that some of it was not understood, however dimly, by contemporaries. It is difficult to think that either Lords and Commons or John of Gaunt were quite blind to the practical consequences that

were certain to flow from the successful practice of Impeachment against the friends and advisers of the king. Nobody could really doubt, even if they had quite forgotten the policies of Thomas of Lancaster, which is exceedingly unlikely, that a downright challenge had been offered in 1376 to the royal supremacy as it had been maintained by Edward III. Circumstances precluded a definitive answer to this challenge in the Good Parliament; but it is certain that there could be no true political peace in England after Edward III's reign, until the issue which had been raised in 1376 had been disposed of, by the triumph of the king or of his subjects, or by a new and difficult act of reconciliation which would somehow bring together once more the component parts of the state which now threatened to fly apart.

(c) *Documents*

- I. The Good Parliament according to Thomas Walsingham in the *Chronicon Angliae*.
- II. Proceedings against the king's advisers according to the *Anonimale Chronicle*.
- III. Record of the Good Parliament in the *Rolls of Parliament*.

I. *The Good Parliament according to Thomas Walsingham in the Chronicon Angliae*

In the year of our lord 1376 a parliament was held at London by command of the king, which began about the octave of St. George and lasted almost continuously for nine weeks. There the king urgently demanded a subsidy from the common people.

But the knights of the shire, divinely inspired, as it is believed, diligently treated together on this matter and refused to answer these requests without the counsel of the magnates. Therefore the knights petitioned that there should be sent to them certain bishops . . . [whom they named], by whose advice they might be informed so as to reply more circumspectly to the requests of the king. When the bishops had been fetched to the counsels of the knights, and when they had heard their charges and had made themselves acquainted with the petitions which the knights intended to put forward, they realized that the matter which had been taken in hand was an

arduous one and could not be brought to a successful conclusion without great and weighty counsel. Certainly the matter demanded great energy. They told [the knights] that they would need to work in every fashion and manner, and that the knights should summon four of the most loyal barons of the realm, men who dearly loved the king and the royal dignity, to help what they had begun. Fortified by the protection of these people, they would evade more easily the traps of the envious, if any were prepared against them, and would stand more courageously for the advantage of the whole kingdom and for the profit and honour of the king. They were going to treat with the king notwithstanding that he would find it hard to accept what was intended for the safety of his body and mind and for the advantage and profit of his kingdom.

The knights followed the wise advice of the bishops, and, together with the bishops, they petitioned the council for four barons, without whom they declared that they neither would nor could treat about anything. Therefore, by their election, four barons were sent to them, namely Henry Percy, Richard Stafford, Guy Brienne and Roger Beauchamp. They caused these knights to be sworn of their counsels and that they would give good aid to them if it should happen to be needed. The barons . . . promised loyal counsel and aid, but not unless as many earls who were loyal to the realm, strong in spirit and powerful in their possessions, were added to their undertakings and councils. They therefore decided, by common decree, that four earls should be chosen, namely Edmund Mortimer Earl of March, Thomas Beauchamp Earl of Warwick, William Ufford Earl of Suffolk and Ralph Stafford Earl of Stafford.

Together with the bishops and barons, the commons petitioned for these earls and received them. Immediately they made them swear to be in their counsels. Nor was it difficult to extort these oaths from them, for every one of them ardently wished to further the honour of the king, the advantage of the realm and the peace of the people. . . .

*That Peter de la Mare was made speaker for his
colleagues⁸*

When, therefore, the above nobles had treated with the knights on the royal request, it was agreed amongst them that they should unanimously refuse the royal requests until certain abuses and

⁸ Heading.

defects had been corrected, and until certain persons who seemed to have impoverished the king and the kingdom, to have vilely tarnished his fame and greatly to have diminished his power, should have been eliminated, and their excesses properly punished according to their kind.

When they had done this, a natural question arose amongst them as to which knight should speak on behalf of the king, the kingdom and the common people. For they feared certain deceitful persons amongst the king's "secretaries"⁹ who had obtained full grace and favour with the king, and who would, they knew, prepare traps for them, on account of the fact that they had for the first time planned to bring their defects into the open.

But whilst they were disturbed about such things, God lifted up the spirit of a certain knight of their company whose name was Peter de la Mare, pouring into his heart abundant wisdom from his treasures, and an unhopèd-for eloquence. He gave him also such great perseverance and constancy that he was neither terrified by the threats of his adversaries nor confused by the plottings of the envious; but he was always ready to suffer all things for truth and justice. . . .

Peroration of Peter de la Mare

Thus the trustworthy Peter began to speak, trusting in the help of God. He stood with his colleagues before the Lords, of whom the greatest was John Duke of Lancaster, whose deeds always stood out in discord with his name;¹⁰ for he always, as it is believed, lacked both human and divine grace.

"Lords" he said "and magnates, by whose faith and industry the government of the kingdom ought to be carried out. I will by no means try to conceal from your wisdom how weighed down the common people have been by the burden of taxes, now paying a fifteenth, now a tenth, or even yielding a ninth to the king's use. All of which they would bear cheerfully if the king or the kingdom seemed to get any advantage or profit from it. It would also have been tolerable to the people if all that money had been spent in forwarding our military affairs, even though these had been unsuccessful. But it is obvious that the king has neither received advantage nor the kingdom any return from it. And so, because the

⁹ A "secretary" was still somebody who knew the king's secrets—a "familiar."

¹⁰ The name of John the Baptist.

public was never told how such great sums of money were spent, the common people are demanding a statement of accounts from those who received the money, for it is not credible that the king should need such an infinitely large sum if his ministers were loyal."

The judges,¹¹ having nothing to say to Peter when he made these statements, kept silent. Then the Duke and his accomplices, since nearly all the magnates and the common people held them in suspicion, omitted any reply at that time, and dismissed the council, that the matters might be treated about elsewhere. . . . [The Duke took counsel with his followers: he is said to have uttered boastful words.] "What" he said "are these degenerate knights of tallow undertaking? Do they think they are the kings or princes of this land? Or whence have they got their pride and arrogance? I think they are ignorant of my power. I will appear before them early tomorrow in such glorious a manner; I will raise up such a great force amongst them; and I will terrify them with such severity, that neither they nor anybody like them will dare in future to provoke my majesty." But one of his men-at-arms is said to have replied to the Duke, who thus glorified and deceived himself with empty promises: "Lord, do not let your magnificence hide from you by whom, and how strongly, these knights are supported. They are not common people as you have said, but men powerful and strenuous in arms. They have the backing of the lords and, first of all, of prince Edward your brother who gives them sound advice and aid. Also all the Londoners and the common people are so closely connected with them that they will not permit them to be overwhelmed with insults or molested with any injury however slight. These knights, if they are insulted, will be driven to undertake all the most extreme steps against your person and your friends; whereas otherwise they might perhaps set out to do very little."

[The Duke is alarmed. He has, in any case, a bad conscience: Thomas accuses him of gross licentiousness.]

*Depositions against Latimer and
Richard Lyons and others*

Then the Duke driven by the sharp prick of his conscience and terrified by the replies of his followers, as we have indicated before, put aside the harshness of his mind when he entered the assembly

¹¹ *Talia Petro dicente non habentes quid responderent ipsi iudices siluerunt.*

of the knights on the following day. Beyond the hopes of any, he showed himself so gracious and favourable to them that he swung them all over in admiration and surprise . . . craftily pretending modesty, he seemed to offer encouragement, saying that he knew well how honourable the desires of the knights were, as they laboured to improve the conditions of the realm. Whatever they thought ought to be corrected, they should set forth, and he would apply the remedy they chose. The knights expressed their thanks to him, although they knew that he was insincere. Then, entering parliament, and standing before his judges¹² they deposed against Latimer, the king's chamberlain, by the mouth of Peter de la Mare, that he was useless to the king and to the kingdom. Therefore they most urgently petitioned that he should be deprived of his office; he was said often to have deceived the king and to have been false—let me not say traitorous—to his lord the king.

[Then follow the charges against Latimer. Others were preferred against Richard Lyons.] When they had put forward these and a host of other charges, they begged the judges that they would justly provide the remedy of correction for their great excesses.

The duke knew that such ill deeds deserved the penalty of death. Nevertheless, he perceived that, if he pronounced sentence of death against them, their goods would fall to the use of the king and not of himself. He chose to delay the pronouncement of the sentence . . . for he ardently desired their money and, what is worse, as it is said, was a partner in their crimes. He dismissed the assembly, for then, to examine the case elsewhere¹³—Would that he would justly judge it!—And he went away. . . .

*Lord Latimer is deprived of his office
and his goods are confiscated*

Meanwhile, the appointed day of judgement of Latimer and Lyons arrived. The duke reflected on the articles presented against Latimer and Lyons. He weighed their quality and their number, (for more than sixty notable defects were presented against them, on the greater part of which they were convicted before the duke and the judges). And although, as it is said, he had received a great sum of money from them, now—wishing to quieten the people whom he knew to be inflamed against him, and fearing the majesty of the

¹² *Et suis astantes tribunalibus.*

¹³ *Alius.*

prince, whom he well knew to favour the people and the knights—he deprived Latimer by judicial sentence of his office. The latter had been chamberlain of the king. He also confiscated all his profits for the use of the king, so that he should be content with his ancestral heritage. His body, which, since he was a peer of the realm he did not wish to be kept in a public prison, he ordered to be kept under safe custody until they should learn the wish of the king concerning him.

It was further decreed, by a common decree of parliament, that Latimer should in future be held as infamous, and that he should in no wise be admitted to the council of the king or of the kingdom. [He also gave sentence on Lyons.] But this vigour dissolved away immediately after the untimely death of Prince Edward. For after that death the duke could do whatever he desired and willed. Thus he afterwards did all things like a judge who neither feared God nor man.

As we have said, the death of prince Edward . . . filled the knights of the shire with despair, . . . The Duke entered the assembly of the knights. He urgently begged them that, during this parliament in which the affairs of the realm were being treated about, the knights, and the lords and barons associated with them, would deliberate as to who should inherit the kingdom of England after the death of the king and of the prince his son. He begged further that, after the example of the French, they would decree a law that a woman should not become heir to the kingdom; for he considered the great age of the king, who was on the threshold of death, and he considered the youth of the Black Prince's son whom, so it was said, he thought of poisoning if he could not gain the kingdom in any other way. If these two could be removed from his path, and if this law could receive the common sanction of parliament, he himself would then be the next heir to the king. . . .

. . . It was replied to him that it was superfluous to labour on such a question, when they [the knights] had weightier matters still on their hands, needing to be further discussed. "And especially" they said "since the king, still healthy and unimpaired in spite of his age, could outlive us all. Even if the king should depart this life, still we should not lack an heir whilst the son of the prince, now ten years old, is still alive. Whilst these two are still living there is no need for us to labour at such a subject."

When he heard this, the duke, in confusion, held his tongue. . . .

After this reply . . . the commons were directed that, if they thought there were other matters still needing correction, they were to report them, in the usual manner, before the duke. They replied that first the things they had deposed before him ought to be duly carried out. [Latimer and Lyons were still at liberty. But the knights deposed against Adam Bury, who escaped into Flanders. Thomas gives an account of Alice Perrers and her great influence with the king.] Therefore the above knights of the shire, on behalf of the community and through the mouth of Peter de la Mare, petitioned that the duke and his fellow judges would provide remedy and correction for such great excesses. [Alice is said to have maintained her influence over the king by magic. She is found to have been married to Sir William Windsor. Edward declared his innocence of this, but he told parliament not to take extreme steps against her. The duke summoned her before the lords to reply for her misdeeds. But when she was unable to reply to many of the charges and was proclaimed guilty "by the judgement of many," she was banished from court.]

*Lords are ordained who are to assist the king, without
whose counsel the king is permitted to do nothing
important*

When these things had happened, and the end of the parliament was already approaching, the knights considered the king's mental incapacity and the free opportunity which some of his familiars had to appropriate the kingdom. Lest these should be permitted, by pretext of the king's wish, to do what they had earlier wished to do, [the knights] petitioned, in the name of the people, that twelve men, peers of the realm and faithful, discreet and devoid of greed, should continually be in the councils of the king and of the kingdom. At least six of them should be with the king at all times, for the less important business. When anything weighty was to be discussed, all twelve should be present.

The commons were stirred by the greed of certain Englishmen, to whom the king had given too much power in managing the affairs of the kingdom . . . with whom everything was for sale, namely faith and justice which they owed to the king and to the people. . . . For this reason the knights petitioned the lords as described above.

The duke, judging their petition to be just (only in word; he revolved something different in his secret heart), adjudged it to be

granted, directing that those lords should be elected by the people. They were elected accordingly.

And it was decreed in this parliament that if any of the said lords was discovered to have received gifts, or to have been disloyal in the obedience he showed either to the king or to the community, he should forthwith be removed from the government and be held infamous for all time; he should pay the king five times what he had accepted, and his body should be at the mercy of the king. And in order that all these things might achieve enduring strength, there were sent from the knights of parliament to the king [a blank in the MS.] who begged his assent and confirmation of all the statutes in the aforesaid parliament, and that this parliament might be ratified according to the custom of parliament and should be classified by the king under the name of parliament.¹⁴ All of which the king promised that he would hold agreeable and determined. And here ended the parliament which has been described above.

—From the *Chronicon Angliae*, by Thomas of Walsingham,
ed. E. M. Thompson (R.S., 1874), 68–101.

II. *Proceedings against Latimer and Lyons according to the Anonimalle Chronicle*

[The commons asked for four bishops, four earls, four barons and bannerets, to advise them. These were granted. They discussed the matter. Then they came to parliament before the lords. They told, through the mouth of Sir Peter de la Mare, how they had been asked to make the king a grant; but, Sir Peter said:] “he has with him certain councillors and servants who are not at all loyal or profitable, to him or to the realm, and these people make profit by subtlety, in deceit of our lord the king.” And at this, the duke of Lancaster was astonished and said, “How is this and who are these people who make such a profit?” “[I will tell you] willingly,” replied Sir Peter. “My lords [he mentions some misdeeds] . . . and in order to prove this he [Sir Peter] begged the council of parliament on behalf of the commons, to have full information from the Bishop of Exeter, and Sir Richard Lescrope . . . [after hearing the testimony of Sir Richard, Sir Peter finished the discussion by saying] “Lord duke, you can well see and understand that the lord Latimer and Richard Lyons have done falsely in order to make profit for their own use. Wherefore we pray for remedy and redress

¹⁴ *Et hoc nomine censeretur.*

and that the said Richard shall be arrested and placed under guard until our lord the king and the council of parliament have declared their will of him."¹⁵

On the following day [Tuesday, 20 May] the lords entered their parliament and the commons entered the chapter-house [of Westminster] and treated from day to day about what was to be done and ordained. And the fourth day afterwards, the lords assembled in their parliament and sent for the commons, to hear what they had to say; and the commons came before the lords in parliament, openly and in a body. The aforesaid Sir Peter commenced to speak: "Lords, we have come here before you, at your direction to show you what is grieving our hearts; and we say that we have declared, to you and to all the council of parliament, several trespasses and extortions made by different people, and we have had no redress; nor are there any around the king who will tell him the truth or give him loyal and profitable counsel, but always they mock and scoff and work for their own profit. Wherefore we declare to you that we will say nothing further until those who are about the king, who are traitors and evil counsellors, be removed and ejected from his presence, and until the present chancellor and treasurer be removed from their offices, for they are not worth a straw; and until dame Alice Perrers be entirely removed; . . . and until our lord the king shall assign to be members of his council, three bishops, three earls and three barons, such as will not shirk telling the truth and will improve matters. No great business shall be carried out or finished without them, or any wards or marriages bestowed without their advice, and they shall redress that which has been ill done and used before this time, in deceit of the king. . . . And they shall hear and amend by their good counsel and advice, the trespasses which have been made, as we have shown before." The lords replied that this would be an advantageous step, and that they would willingly inform the king of their agreement [*enseu*] and counsel and of their purpose; and they went away for this day, without doing more. . . .

A short time afterwards, the Lords and Commons entered parliament; and the duke [of Lancaster] announced what the king had done, and that the nine lords, elected to be of the king's council, had been sworn loyally to counsel and govern him and the realm, according to their power. On this the commons thanked him

¹⁵ Notice that they do not demand this concerning Lord Latimer—he had the right of judgement not by the council in parliament, but by the Lords.

greatly for his good grace and will. This same day the nine lords aforesaid were present in parliament and Peter de la Mare began to speak the following lines: "Lords, and it please you, you have been ordained by the king to hear and amend the faults which we have shown to you already and those which we are going to show you; and we all pray you to do this, for the profit of the kingdom, and we will tell you more later. You know very well that we have spoken of divers points and trespasses, concerning Lord Latimer and Richard Lyons, which have as yet received no redress whatever. . . . Upon which, we pray and demand of you, on behalf of the king and of the council of parliament, that the aforesaid Lord Latimer should be arrested and put under safe guard, for all the trespasses and forfeits aforesaid, until he has made satisfaction to the king for his misdeeds and been restored to favour, and until the said Richard Lyons has been judged according to his deserts on the points and articles raised against him and which he cannot reasonably refute." At which time lord Latimer was appealed and arraigned concerning the aforesaid points, before the lords of parliament. . . .

—From the *Anonimale Chronicle*, ed. V. H. Galbraith (Manchester, 1926), 90-1.

III. *Proceedings in the Good Parliament, 1376, according to the Rolls of Parliament*

. . . On which day, the prelates, dukes, earls, barons and others, lords and commons, justices, sergeants of law and others assembled in the Painted Chamber. There, before the king himself and all the others, John Knyvet, knight and chancellor of England, by the king's order pronounced the cause of the summons of this present parliament. . . .

3. The chancellor asked them, on behalf of the king, to discuss the matter diligently. That is to say, the prelates and lords should discuss by themselves and the commons by themselves; and they should report their considered reply as soon as they well could, so that parliament could be more quickly completed. . . .

8. When the prelates, lords and commons had assembled in parliament, the commons were directed, on behalf of the king, to go back, by themselves, to their wonted location in the Chapter-house of Westminster Abbey; and there they were to confer and take counsel amongst themselves. . . . The prelates and lords were to have a similar conference, on their part. . . . And thus the commons departed to their said place. . . .

10. The commons, considering the mischiefs in the land, showed to the king and to the lords of parliament¹⁶ that the officers who were normally at the king's charge were no longer sufficient, without additional help, to such great responsibility of government.

Wherefore they begged that the king's council should be enforced by lords of the land, prelates, and others, who would remain continually, up to the number of ten or twelve, according to the king's wish, in such a way that no great business should be put through or accomplished without the assent and advice of all. Lesser business [should be put through] with the advice and assent of four or six at least, as the case required. Four or six of such councillors at least should be continually present at the king's council. And the king, considering the request to be honourable and very profitable to him and to all his realm, granted it. Provided always that the chancellor, treasurer and keeper of the privy seal and all other officers of the king should be able to do . . . the business of their departments without the presence of the said councillors. . . . And it is ordained . . . that the councillors who now are assigned . . . shall take oath to keep this ordinance and to do right to every one, according to their powers. . . .

15. Afterwards, the said commons came into parliament and there made open protestation that they were as willing and firm in purpose to help their liege lord with their bodies and their belongings, and with whatever they have, as ever any others were in the past; and they always would be, as far as they were able. But they said, and it seemed to them to be the truth, that the king would be very rich in treasure if he always had loyal councillors and good officers around him. In this way, he would not have any great need to lay burdens on his commons in the shape of subsidy or tallage, or in any other way, considering the great sums of money which have been brought into the realm from the ransoms of the kings of France and Scotland, and from other prisoners and lands, which amount to a very large sum. . . . And on this matter, the commons themselves there made a declaration, on three points in particular.

16. . . . And then, afterwards, the commons complained in parliament about the following people in particular, declaring that a

¹⁶ *Seignurs du Parlement*. They said that what they did was to the honour of the king and the profit of all the land. In other words, it concerned the people as well as the king.

number of deceits and other wrongs had been done to the king and to his realm, in the following way:

17. Firstly, Richard Lyons merchant of London, was impeached and accused by the said commons of several deceits, extortions and other evils, committed by him against the king and against his people, both at the time when he stayed at the palace and council of the king, and also at the time when he farmed the subsidies and customs of the king. . . .

18. To which the said Richard, present in parliament [replied]. . . . As to the other articles, the said Richard made no reply: He said that if he had trespassed in any way in those matters or done any wrong, he threw himself on the king's grace.

19. On account of which, the said Richard was adjudged to be imprisoned at the will of the king. . . . And on this Richard was commanded to come before the lords of parliament, and he was told that it seemed to the lords that his misdeeds were so great and horrible that he had not enough substance to give satisfaction for them. . . .

20. William Lord Latimer, was impeached and accused by the clamour of the said commons, of divers deceits, extortions, grievances and other evils, committed by him and others of his following, during the time when he stayed with the king, both in Brittany when he was in office with the king, and also in England whilst he was chamberlain and was a member of the privy council of the king. . . .

27. And on this, various other discussions and reasons were put forth and uttered, as well in full parliament as otherwise before the Prelates and Lords alone, as well on behalf of our lord the king as on behalf of Lord Latimer. And several examinations of the matter were held, both in private and in public. And after long deliberation about it, judgement was given in parliament on the said Lord Latimer in the following words: . . .

28. Because Lord Latimer was found guilty, in full parliament . . . it is adjudged, by the Prelates and Lords in full parliament, that he be imprisoned . . . at the will of the king. On which the said commons begged the king that because he [Latimer] has been found guilty . . . he should be removed forever from all offices of the king and from special and privy councils around the king, which petition the king has heard and wills and grants.

29. On this, the said Lord Latimer found securities for the duration

of the parliament, certain prelates, lords and others, to have his body before the king and the lords, to reply there to the articles with which he was thus accused, under a certain penalty and form given in a schedule attached to this writing. And by virtue of this security the marshal of England allowed him to be at large etc.

[William Ellis and Lord John Neville were similarly accused.]

34. Lord Neville, present in parliament, replied, . . . And, on this the commons begged judgement on Lord Neville, and that he be removed from all office under the king. . . .

47. Adam Bury, citizen of London, was impeached by clamour of the commons in this parliament . . . as more plainly appears in a great Bill put forward in parliament on the last day of this parliament at Eltham. And on this the said Adam was summoned to come and make reply in parliament. He did not come, and could not be found; wherefore it was awarded that all his goods and chattels should be put under arrest. This was done, therefore, by writs sent to the sheriffs of London and of Kent; and the said Bill is filed with the special petitions of parliament.

50. The said commons prayed the king humbly in the said parliament that it would please the king, to the great comfort of all the realm, to cause the noble child Richard of Bordeaux to come before parliament, . . . so that the lords and commons of the realm can see and honour Richard there, as true heir apparent of the realm. Which request was granted; and so Richard came before all the prelates lords and commons in parliament, the Thursday, day after the feast of St. John.

—From *Rot. Parl.*, II, 321–60. Printed in part by Lodge and Thornton, pp. 146–51.

Chapter Seven

THE CRISIS OF 1386-7

(a) *Some Recent Works*

- CLARKE, M. V. "The Lancastrian Faction and the Wonderful Parliament," in *Fourteenth Century Studies* (Oxford, 1937), 36-52.
- CLARKE, M. V., and GALBRAITH, V. H. "The Deposition of Richard II," in *B.J.R.L.*, XIV (1925), 125-8.
- GALBRAITH, V. H. "A New Life of Richard II," in *History*, N.S. XXVI-XXVII (March 1942), 223-39.
- MYRES, J. N. L. "The Campaign of Radcot Bridge in December 1387," in *E.H.R.*, XLII (January 1927), 20-33.
- PIKE, L. O. *A Constitutional History of the House of Lords* (London, 1894).
- SCOTT, F. M. "Chaucer and the Parliament of 1386," in *Speculum*, XVIII (January 1943), 80-6.
- STEEL, A. *Richard II* (Cambridge, 1941).
- TOUT, T. F. *Chapters in Medieval Administrative History*, III. "Parliament and Public Opinion, 1376-1388," in *Collected Papers*, II, 173-90.
- WILKINSON, B. "Tendencies in Fourteenth Century Constitutional Development," as listed in Chapter I above.

(b) *Introduction to the Documents*

VARIOUS reasons have been advanced for the crisis of 1386. Stubbs saw in it the ambitious hand of Thomas of Woodstock, Duke of Gloucester.¹ Mr. Steel thought that the attack was intended as a general indictment of the "entire Lancastrian foreign policy," but was so clumsily made that it almost immediately degenerated into a personal attack on Michael Pole.² Professor Tout believed that the monopoly of

¹ *C.H.*, II, 494-5.

² *Richard II*, 120.

power by the courtiers united the aristocracy and gave new strength to the opposition in parliament.³ Some of these causes were undoubtedly important; but perhaps none goes quite to the root of the matter. It probably needed something more than Gloucester's ambition to begin a crisis of such magnitude. If foreign policy was the source of popular discontent in 1386 it would have been natural to say so at the beginning of the challenge to the monarch. Behind the monopoly of power by the courtiers, such as it was, lay the royal sovereignty on which the courtiers had to rely. It will be suggested below, therefore, that perhaps a still deeper cause of the crisis was the constitutional problem of sovereignty. This expressed itself through the breakdown of the Edwardian political system and the demand for a new partnership in government by the Commons and Lords. The whole resolved itself into a struggle to determine the pattern of the emerging national state, whether it should be dominated by the power of the ruler or of the community.

In this connection, the significance of the events of 1376 does not need repetition; but perhaps a special word should be said of the Minority which followed. During the Minority, the Lords and Commons in parliament had elected councils to govern the king and the kingdom.⁴ In 1377 they had shared in the election of the chief ministers and claimed a right to influence the personnel of the king's household. They got the appointment of two treasurers of war to supervise expenditure. In 1379 a committee was appointed in parliament "to examine the state of the king." In 1380, parliament claimed power to elect the five principal officers of state; and a commission was appointed, with far-reaching powers, to examine "all the courts and places of the king." Another even more comprehensive commission was appointed in November 1381. The magnates still participated in the election of the king's ministers at the council at Reading in August 1381; and the Earl of Arundel

³ *Chapters*, III, 408.

⁴ Reminding us of William Marshal, *rector regis et regni* in the minority of Henry III.

and Sir Michael de la Pole were elected to govern and counsel the person of the king as late as the parliament of 1381-2.⁵

The exact date when Richard II began to assume the rule of the kingdom has not yet been determined.⁶ Perhaps the most likely point is the parliament of November 1381 to February 1382, after the Peasants' Revolt in which Richard had played such a conspicuous and gallant part.⁷ It was in regard to this parliament that Thomas of Walsingham asked what profit there was in writing down its statutes when hardly any result followed from them. The king in his secret council, he said, kept changing all that had been determined, not only by the Commons, but also by the Lords.⁸ Thomas's remarks are very interesting for they seem to show the beginnings of the conflict which resulted from Richard's first insistence on making his own decisions and taking some affairs into his own hands. His personal rule had not yet been established. Lords and Commons still felt entitled to settle important matters, to make comprehensive inquiries into all aspects of government, and even, perhaps, to arrange for the king to have "governors and counsellors;" but Richard was already making decisions for himself, where parliament could not control him. This was probably the beginning not only of an exercise of royal power by Richard, but also of a restoration of the attributes of monarchy after the Good Parliament and the Minority, as important and probably as hazardous as had been that of Henry III.⁹

⁵ *Rot. Parl.*, III, 104. Who "elected" them is not certain. Their election was reported to the Commons on behalf of the king.

⁶ See A. Steel, *op. cit.*, 103 n.2. In the ordinance of 1374, Charles V of France fixed the age of thirteen as that of the majority of his successor; Perroy, *La Guerre de Cent Ans*, 158. But the latter did not take over the government until 1388, when he was twenty years old; *ibid.*, 163.

⁷ During this parliament, Richard was married to Anne of Bohemia, on 20 January 1382. Richard's part in the Peasants' Revolt should not be exaggerated; see my "Peasants' Revolt of 1381," *Speculum*, XV (January 1940), 12-35.

⁸ *Chronicon Angliae*, 333.

⁹ Richard's latest biographer believes that it was some time after this that Richard plunged heavily into politics on his own account; A. Steel, *op. cit.*, 121. Professor Tout believes the appointment of Arundel and Pole as advisers to have left Richard even less of a free agent in 1382 than he had been in 1381; *Chapters*, III, 386.

It was probably because of Richard's determination to control his own ministers that he made Richard Scrope resign the great seal in July 1382, for remonstrating against lavish grants made by the king. The repeated proposals, in 1382, 1383 and 1384, that Richard go to war in person, may have been designed in part to support his personal rule. Attempts in the parliament of February to March 1383 to continue controls over the king were coldly received. Partly in consequence, perhaps, deep hostility against Richard was shown in the parliament of October to November 1383 by the temporal lords.¹⁰ It seemed to the lords that the king depended on foolish advice. They thought that it would be better if they themselves bore the weight of the government. Richard's predecessors had always depended on the counsel of the magnates. But Richard asserted that he would not be either governed or led by their advice, but by that of his council, namely by men tested and chosen from the kingdom. The chronicler notes that the magnates were very angry, but that Richard moved warily and discreetly in the whole matter. It seems clear that he was determined to rule as well as reign in his kingdom, and that the lords were very reluctant to surrender their power.¹¹

A few subsidiary factors making for a crisis in 1386 should also be mentioned. The first was the attitude of the Commons. Their support might have greatly strengthened Richard, for he had been the Londoners' king and might have looked to the Commons against the Lords; but such a political alignment did not, in fact, occur. It was a London representative who was imprisoned by Richard shortly before the crisis, for bringing a charge against Robert de Vere.¹² In 1385 the king cate-

¹⁰ Monk of Westminster, in Ranulf Higden's *Polychronicon*, ed. J. R. Lumby (R.S., 1886), IX, 26.

¹¹ This may well have been the main cause of friction between 1383 and 1386. In the parliament of April to May 1384, the Earl of Arundel denounced the scandals of Richard's administration in such strong terms that the king called him a liar and told him to go to the devil; Monk of Westminster, *op. cit.*, 33. It is unlikely that the weakness of administration, for which Richard had been responsible at the most for a short time, can have been the ultimate cause of these dissensions.

¹² An account of the complicated politics of London, so important in this period, is to be found in Ruth Bird's *Turbulent London of Richard II* (London, 1949).

gorically denied the right of the Commons to interfere with his ministers or his household. Whatever the exact reasons, the friendship of the Commons for Richard was not enough to make them abandon the rôle they had played in the Good Parliament. Their support of the Lords created the conditions necessary for a successful opposition to Richard II.

The second was the character and policy of John of Gaunt. By nature and through his vested interests, he seems to have been a royalist; but his support of the Crown in 1376 had gained for him mostly abuse. In this revival of the old issues he chose to be neutral. But his very neutrality was menacing to both sides and probably made him the centre of swirling intrigue. In 1384 John Latimer, a Carmelite friar, accused him of plotting against Richard. In 1385, Gaunt himself declared that the courtiers were conspiring against his life and withdrew from the royal council. Richard's anger—he threatened with his sword Archbishop Courtenay of Canterbury who interceded—was possibly not only at Gaunt's accusation, but also at his political neutrality. Tired of the struggle, and pursuing other objectives, John left England in July 1386 on his Spanish expedition. His departure almost certainly precipitated the great crisis of 1386. This might never have occurred if Richard had been able to retain his uncle's active support.

We may perhaps sum up these causes as follows. The crisis of 1386 was essentially a continuation of that of the Good Parliament, deepened and extended by the events of the Minority. It occurred mainly because Richard II, by using his own advisers and servants and by insisting on his prerogatives, attempted to regain powers lost to the monarch. How far he was also ambitious for despotic power at this early stage is uncertain. On the whole, it seems likely that this was a later development as suggested, very tentatively, below.¹³ In the face of these actions, the magnates were driven to assert

¹³ Nevertheless, there is no clear evidence that Richard would have been content with a political arrangement like that of 1330. Perhaps the Lords had this in mind in their complaint at the parliament of October 1383 mentioned above. Richard was in any case, as always, very provocative in his methods.

and even expand the claims made in the Good Parliament. They had to re-establish these claims, not against an ailing ruler, but against a young, ambitious and intelligent king. The success or failure of this effort would obviously go far to determine the fortunes of the monarchy under Richard and the character of the remainder of the reign.

After these lengthy preliminaries, the opening moves of the crisis may be briefly disposed of. They are described below (Doc. I) by Henry Knighton, canon of St. Mary's, Leicestershire, a partisan of John of Gaunt. Some doubts have been cast on parts of Henry's story, but the main facts seem to be authentic. He tells of a "coalition" move by Lords and Commons, demanding the removal of the king's chief ministers, and clearly threatening a repetition of 1376.¹⁴ Richard's tart reply was probably more than the product of youthful irresponsibility; it was a declaration of his concept of the royal prerogatives as well as a rejection of the baronial demands. The negotiations which followed throw a flood of light on the intentions and motives of the opposition. They show how the Lords and Commons continued and extended the movement of 1376, and proclaimed ideas which the earlier crisis had left unformulated and obscure. Thomas of Woodstock and Thomas of Arundel¹⁵ were sent "by common assent of all the parliament" (Doc. I) to seek an interview with the king. They went "on behalf of Lords and Commons." For the first time, in a major political crisis, we see the Lords and Commons openly regarding themselves as parliament, one of the most significant of all the developments of this period.¹⁶ No one questioned that the king formed part, indeed was the head, of the parliamentary assembly; yet the election of Arundel and Woodstock by common assent of all the parliament in

¹⁴ "They had matters to treat about with Michael of such a nature that they could not treat with him whilst he was in the office of Chancellor"; Document I below.

¹⁵ Duke of Gloucester and Bishop of Ely.

¹⁶ There are scattered indications of some such development, perhaps running as far back as the *Tract on the Office of Steward* under Edward II, but these have not yet been thoroughly investigated.

Richard's absence shows how far the leaders of the movement of 1386 had travelled from the parliament of the Statute of York towards that which confronted Charles I.

The terms in which the deputation addressed Richard at Eltham are equally illuminating. First of all, they pronounced, almost without reservation, the doctrine that parliament (not the king in his council in parliament, but parliament itself) is a court, "the highest court of all his realm." This is the first time, so far as we know, that this concept was formally set forth by the opposition to Richard even though it had clearly been accepted by the Chancellor in 1384.¹⁷ Hence, it is a landmark in the history of parliament, although for a full declaration on the subject, we have to wait until the parliament of 1388. The next point the deputation made was the assertion of the right of parliament to deal not only with the state of the kingdom, but also with the condition and rule of the king. This gave notice that the king himself was not immune from the consequences of parliamentary discussion.¹⁸ It was a theory of the omni-competence of the assembly which had never been uttered clearly since the restrictive Statute of York.

The third point, in which the Lords and Commons claimed the right to supervise expenditure, asserted for them a new control over finance, the importance of which it is scarcely necessary to underline. The fourth, which conceded Lords and Commons the right to dissolve if the king wilfully stayed away for forty days, is more elusive in its implications, but not much less important. It shows how dependent parliament still was on the presence of the ruler, as it had been when Edward II had refused to attend after the "execution" of Gaveston. It is also, perhaps, one more indication of the way in which the assembly was being turned into an instrument of the Lords and Com-

¹⁷ In 1384 the Chancellor used the expression "Parliament, which is the highest court of the Realm"; see H. L. Gray, *The Influence of the Commons on Early Legislation*, 417; S. B. Chrimes, *English Constitutional Ideas in the Fifteenth Century*, 71; *Rot. Parl.*, III, 169.

¹⁸ How Richard was probably temporarily deposed in 1387 is set forth in the fascinating article by Professor Galbraith and Miss Clarke, listed above.

mons. The king still, according to the "constitution," both summoned and controlled the assembly. In practice, the assembly, once summoned, was threatening to control the king. Hence Richard's reluctance to attend in 1386. The monarch possessed the theoretical, but "parliament" was trying to obtain the practical, power. There was a discrepancy, on both sides, between theory and practice, which was one of the causes of the recurrent crises of the reign.

It is only in the light of these facts that we can understand the extreme nature of Richard's reply to the "parliamentary" deputation (Doc. I). He talked about the people and Commons resisting him and plotting against him. He probably argued that perhaps it was better to get aid from the king of France than to submit. His extreme defiance produced a final ultimatum from the envoys. This was the threat of deposition concerning which a special word should be said.

The threat was blunt and explicit. It was to be carried out if Richard should alienate himself from his people, or disregard the laws and statutes, or fail to get the "wholesome" advice of the Lords. This is a very important constitutional declaration. It was only an elaboration of similar threats in the thirteenth century. Nevertheless, it constituted an unprecedented challenge to the king's supremacy. The right to depose superseded the right to oppose which had been made in the baronial declaration of 1308. The grounds were now more explicit and contained a concept of much greater equality in partnership between king and magnates. Ruling without the advice of the magnates had always been an offence, by any medieval ruler; but it had not, before 1386, been regarded as forfeiting the very title to rule. In terms of actual political practice, this was an assertion that government in England was by king in parliament. It was one more prelude to the rise of a new concept of sovereignty in the state.

The immediate result of the threat was to shatter Richard's opposition. The Lords and Commons proceeded to re-establish the great instrument of Impeachment, with all that it connoted. This time the Commons asked for judgement, not

by the Lords, but of "parliament" (Doc. III). Whether they got it or not is not quite certain;¹⁹ but it is important that they asked for it; and it is almost equally important that many people considered this is what they got.²⁰ They had advanced, just as Thomas of Woodstock and Thomas of Arundel had, a step beyond the simple accusation by Commons and judgement by Lords of 1376.²¹

The details of the misdemeanours of which Suffolk was accused need not be discussed here. As Stubbs says,²² "Every point charged against him he either denied or explained; and, although the parliament replied and he rejoined in a way that seems on the record sufficiently convincing, his enemies were his judges." It was, Stubbs concludes, not for the reasons alleged that his condemnation was demanded. Nor has modern research failed to confirm this opinion.²³ Nevertheless the conclusion of Professor Tout, echoed by Mr. Steel,²⁴ that the charges were simply an excuse to get an unpopular minister out of the way, or the designation of Richard's opposition as a "blind attempt to rescue Pole,"²⁵ seem possibly to underestimate the challenge which the attack on Pole had offered to the whole ascendancy of the monarch. On both sides of this political struggle, it is possible, there was a realization that important constitutional issues were at stake.

The second great feature of the attack on Richard's position was the appointment of a committee of reform (Doc. IV)²⁶

¹⁹ *The Rolls of Parliament* (Doc. III) seem to imply that judgement was by the King and the Lords.

²⁰ This is what Thomas of Walsingham thought (Doc. II), and also Henry Knighton (Doc. I). Thomas says also that triers and judges were appointed, to have full power of judgement on Michael and others. This is a puzzling remark which I cannot explain. But he clearly asserts that Michael was "adjudged worthy of death by judgement of parliament."

²¹ See p. 205 above.

²² *C.H.*, II, 498.

²³ See an interesting discussion of one of the charges by N. B. Lewis: "Article VI of the Impeachment of Michael de la Pole," in *E.H.R.*, XLII (July 1927), 402-7. See also T. F. Tout, *Chapters*, III, 413-14; A. Steel, *Richard II*, 123.

²⁴ T. F. Tout, *Chapters*, III, 414; A. Steel, *Richard II*, 123.

²⁵ *Ibid.*

²⁶ And also *Statutes of the Realm*, II, 39-43; *C.P.R.* 1385-9, 244; Monk. West., 83-9.

with the most comprehensive powers. The commissioners had complete authority over every aspect of government, except the person of the monarch. The Crown itself was not exempted from the scope of the commission.²⁷ According to Knighton, the Lords and magnates of parliament elected fourteen lords who had the government of all the realm, who swore on the Gospels justly and loyally to regulate all the business of the king and kingdom. Only one real limitation had to be placed on their activities, by force of public opinion and tradition. Their powers were to exist only for one year. It is hard in spite of this limitation, "to stress the comparative moderation, even at this stage, of the opposition,"²⁸ or to agree with Stubbs²⁹ that Richard, in straightway settling himself in opposition, was blind to his own advantage. This commission was complementary to the declarations of the Lords and Commons and the revival of Impeachment. As such, it was an assertion of the political ascendancy of Lords and Commons over the ruler, and of the supremacy of parliament, which they now dominated, over all elements in the state. It is hard to think that Richard saw any moderation in the position of his opponents, or that he felt he had any recourse except uncompromising opposition. The events of 1386 had brought into sharp focus two almost irreconcilable concepts of the political structure. It was hardly to be expected that either Richard or the barons would surrender without a struggle political views built in each case on much precedent and evolution, or that the struggle would be brought to a conclusion without further, and even more decisive, political strife.

That Richard intended to continue the struggle was probably made clear by his declaration, at the end of parliament, that "on account of any thing done in the said parliament he was unwilling that prejudice should be incurred by himself or his crown" (Doc. III).³⁰ His actions were in line with his decla-

²⁷ The king granted the petition that the commissioners "have power to correct and amend all the defects which so greatly blemish your crown."

²⁸ A. Steel, *Richard II*, 124.

²⁹ *C.H.*, II, 499.

³⁰ This, however, has been regarded as largely formal; A. Steel, *Richard II*, 125. T. F. Tout took it more seriously; *Chapters, III*, 416.

ration. After his famous withdrawal from Westminster on 9 February 1387,³¹ he underlined the constitutional weakness of the claims of Lords and Commons by certain questions to some of the leading judges; and these questions with their answers (Doc. V) are so important, as illustrating the issues before the country, that they must be discussed at considerable length.

It seems likely that the answers, in the main, represented the traditions and customs of the land. It is now fairly well agreed that the judges were not coerced in making their decisions.³² The fact that these decisions represented little more than a royalist reaction against the aristocratic encroachments of the previous fifteen years does not mean that they had not the support of both the law and the constitution.³³ Nor is it altogether certain that it was Richard's questions to the judges which drove his enemies to bay. Another crisis was inevitable, it could be argued, even before Richard posed his questions. As Stubbs truly remarked, the questions were equivalent to a declaration of war;³⁴ but war had been begun, by the Lords and Commons, not by Richard, in the parliament of 1386.

In these questions and answers which are translated below (Doc. V), Richard and the judges between them condemned all the main actions of the assembly of 1386. They declared the guilt of treason for imposing statutes on the ruler (question three), preventing the king from exercising his regality (question four), taking the direction of parliament out of the king's hands (questions five and six), impeaching the king's ministers against his wish (question seven), or producing a "statute" for deposing kings (question eight). Miss Clarke has brought out clearly the political importance of this extension of the Act of Treason of 1352,³⁵ which contained none of these offences.

³¹ For a good discussion of this, see T. F. Tout, *Chapters, III*, 418, 419.

³² A. Steel, *Richard II*, 129-34. The whole procedure, Mr. Steel thinks, was bad strategy. But it is not always easy to accept his view of Richard II's political sagacity, e.g. *ibid.*, 122-3. It must be put alongside the view that Richard's opponents also were deficient in political sense. According to Mr. Steel, nobody in 1386 had a very clear notion of what all the trouble was about.

³³ As Mr. Steel says (*Richard II*, 129), "nothing was really left to Richard except his legal rights."

³⁴ *C.H.*, II, 501.

³⁵ *Fourteenth Century Studies*, 131-2.

Treason meant forfeiture, hanging, quartering, disembowelling and attainted blood. It had been partly banished from political struggles by the act of 1352. Richard brought it back, to cover a wide area of political strife.

How far Richard is to blame for this extension is still, perhaps, an open question. The unwritten pact between the king and the magnates, which the Statute of Treasons represented, had been rejected and broken by the latter. Richard II had been attacked, as he believed, without reservations or scruples. It was not unreasonable, he may have argued, in the interests of the kingdom as well as of the monarchy, that he should be protected against such attacks by all the force of the law. The offences now punished by treason were at least as harmful to the monarchy as some of those enumerated in 1352. It was perhaps inevitable that the statute of 1352 should one day be widened. It would not serve indefinitely to support the new monarchy of the growing national state. On the other hand, it was dangerous and unconstitutional that this extension came by the hands of the king, not by agreement between the king and the nation. The fact that it did, throws some light on the cause of the attacks upon Richard. It illustrates his lofty conception of the royal dignity and power. The magnates were not mistaken in fearing his pretensions. His extension of treason is perhaps the first unmistakable proof of the harshness with which he would have pursued this struggle if he had obtained a clear advantage. It was one of the things which put the opposition, in spite of their mistakes and excesses, on the side of liberty.

In any case, by these questions and answers, Richard successfully got a condemnation, by the highest legal opinion outside parliament, of all the major claims and premises of the opposition. The opinion of the judges was as definitive and complete a buttressing of the royal ascendancy as had been the Statute of York.³⁶ It showed the enormous breaches which had

³⁶ It is worth noting that Edward II could get his enactment made in parliament. Richard II had to get his, outside parliament, by a mere declaration of the judges.

been driven, since 1322, through the royal defences. It underlined, by the issues it dealt with, the losses incurred by the monarchy. Nevertheless, it shows how overwhelmingly strong Richard still was in his theoretical attributes; how much he had the constitution behind him in his struggle with Lords and Commons; and how reasonable it was for him to imagine that if his case could be properly presented to the nation, it would meet with a very good response.

Richard's appeal to the nation ended the immediate repercussions of the parliament of 1386 and began a new series of events. Before turning to these, a final word should perhaps be said on the differences between the above interpretation and the views of some modern historians. The greatest arises out of the insistence above on the deep constitutional issues which divided Richard II from his opponents; it involves the extent to which the struggle of 1386 was an attempt of Richard to deny, and of the Lords and Commons to consolidate, gains which the latter had made at the expense of the Crown since 1375. If the above arguments are true, we shall have to conclude that Stubbs, in spite of his masterly treatment of the period, did not quite sufficiently take this aspect of the problem into consideration. Professor Tout was mainly interested in administration and the king's household. He tended, though with scholarly restraint,³⁷ to interpret the conflict in these terms. To Mr. Steel, the magnates had, as yet, "worked out no constitutional theory at all."³⁸ Richard's policy was a combination of youth, rashness and inexperience. The whole crisis was largely the product of bungling on all sides.

Such differences of opinion are not only the product of vary-

³⁷ Richard, he thinks, built up a court party to support absolutism. But its plans, apparently, did not go beyond the development of the signet seal, which occupied much the same place in the government as the privy seal had occupied fifty years before. Its chief aim was a capture of the administration, though Professor Tout puts alongside this the building up of royal power in Ireland, and also a "peace policy," which is a little more dubious; *Chapters*, III, 407-14. It is interesting to notice the importance given to this peace policy, for which there is considerable but not entirely conclusive evidence, in Gordon Daviot's (Elizabeth Mackintosh) *Richard of Bordeaux* (London, 1933).

³⁸ *Richard II*, 124. Richard, for his part, showed "a complete lack of any true political sense."

ing interpretations of the evidence. They are the result of conflicting views of human nature in the fourteenth century, of the constitutional background, of the rôle of administration in politics, and of other aspects of fourteenth-century life. The extent to which medieval statesmen understood the constitutional problems which confronted them is a particularly difficult question.³⁹ No doubt many of them were animated by selfishness and blind to the deeper consequences of their acts. Nor do the contemporary chroniclers give us many generalizations of constitutional interest. They record nearly everything in terms of personalities. Nevertheless, it is probable that great issues confronted these men, as in every medieval generation, and that some were settled by them. It is not easy to believe that they found their solution only by groping in the dark. Nor is it easy to believe that they continued the work of the Good Parliament without some understanding of where they were going. There is indeed a danger of reading much more into our documents than was put there by men of the fourteenth century; but it seems even more dangerous to work on the assumption that none of the great constitutional issues of the period was even partly understood. It seems safe to believe that the men of the fourteenth century were no better and no worse than the men of the twentieth. They had a different education and sense of values; but they had been taught that they had a certain responsibility for the welfare of the government; and some of them probably took the trouble to make themselves reasonably familiar with the problems, political and constitutional, which this entailed. In any case, they had very expert advisers. Discussion and counsel had been their watchwords for centuries. On the whole, they were not likely to be far wrong in their estimate of the problem provided by the young Richard's concept of government and by his view of the conduct of public affairs.

It seems to be clear that these differences of opinion about the crisis of 1386 go very deep and are likely to be persistent.

³⁹ It has already been touched upon in Chapter I.

They underline the need for further research on the problem. Nevertheless, it is perhaps possible to draw some tentative conclusions as to the significance of events. In the first place, this conflict witnessed the final disintegration of the political system which had been set up by Edward III. It continued that of 1376 and showed that the crisis of the Good Parliament, as we had already suspected, had not been due solely to John of Gaunt or the senility of the old monarch; it was a response also to deep forces making for constitutional change. The great issue of sovereignty, obscure or hidden in 1376, was made unmistakable ten years later. Lords and Commons developed the concept of the High Court of Parliament and used the assembly to coerce the young Richard, much more plainly than they had used it to coerce Edward III. To Impeachment, they added the threat of deposition, and a reforming council with functions wider even than those of the council set up by the Good Parliament, without the excuse of the senility of the king. Though they were far from challenging the theoretical supremacy of the monarch, they began the long process of claiming for themselves the authority and attributes of the parliamentary assembly. They asserted a *de facto* sovereignty of the community of England. Thus the national state⁴⁰ at length brought the ruler and the subjects face to face in a competition for political supremacy which may fairly be claimed to have been different from any such competition in the past.

It will be clear, if there is any truth in these observations, that the crisis of 1386 was not likely to be the end of the struggle. The problem of sovereignty in England admitted of no simple solution. The extreme measures of the opposition in 1386 tended to give the king the support of both moderates and traditionalists, the Hampdens of the fourteenth century, who

⁴⁰ A friendly critic has questioned the use of the term "nation" in Volume I of this work; B. E. Keeney, in *Speculum*, XXIV (April 1949), 305. His warning is very salutary. He himself has contributed to our understanding of this difficult term as applied to the Middle Ages. It is, however, a term which, whilst it has to be used with great caution, is difficult to avoid. The practical consequences of the national state seem to have been important long before any important theory was evolved.

wanted constitutional progress but the old establishment. From this time on Richard's cause might suffer disasters, but it slowly gained in power and appeal until it in turn was destroyed by its own excesses. The vicissitudes of Edward II's reign were repeated with strange fidelity; and the end, the destruction of the reigning monarch, was exactly the same.

(c) *Documents*

- I. Henry Knighton on the events of 1386-8.
- II. The events of 1386 according to Thomas of Walsingham.
- III. The Impeachment of 1386 according to the *Rolls of Parliament*.
- IV. The reforming council of 1386 according to the *Statutes of the Realm*.
- V. Declaration of the Judges, 1387.

I. *Henry Knighton on the events of 1386-8*

The magnates of the realm and the commons sent word to the king, by common assent, that he ought to remove the chancellor and treasurer from their offices, for they were not profitable to the king or to the kingdom; and also they had matters to treat about with Michael of such a kind that they could not treat with him whilst he was in the office of Chancellor. The king, stirred by this, sent word back that they should be silent concerning these things and should proceed with the business of parliament and hurry to bring it to a close; he declared that he would not move the least boy of his kitchen from his office, on account of them.

[The king asked for a subsidy; the lords and commons by common assent refused, until the king came in person and removed Michael from office. The king sent back word that they should send forty of the wisest and most substantial of the commons, who would report the wishes of the rest. There were rumours of a plot by the king to arrest the leaders of parliament. By common assent of all the parliament Thomas Woodstock and Thomas Arundel bishop of Ely were sent on behalf of lords and commons. They spoke to him as follows:]

"Lord king, the magnates and lords and all the people of the community of your parliament commend themselves with the deepest obedience to the most excellent protection of your royal dignity, . . .

On behalf of whom we intimate this to you; that from an ancient statute and from a praiseworthy and approved custom, which cannot be contradicted, we have it that our king can call the lords and magnates of the realm, and the commons, to his parliament, once a year, as to the highest court of all his realm.⁴¹ There complete equity should shine, without any blemish, . . . There, also, [the king can] reform the mistakes of the kingdom and treat with very wise counsel about the condition and rule of the king and of the kingdom; so that the internal enemies of the king and of the kingdom and the external enemies may be destroyed and repelled, . . .

. . . and to take care how the burdens weighing on the king and the kingdom can best be supported to the advantage of the community. It seems also to them that, since they support the burdens which press, they have also to supervise how and by whom their goods and chattels are expended.

They say also that they have it out of an ancient statute that if the king shall voluntarily alienate himself from his parliament, not staying away because of any infirmity or any other necessary cause, but shamelessly withdrawing himself by reason of his arbitrary wish, during a period of 40 days, caring neither for the vexation of his people nor for their heavy expense, then it is permitted to all and singular of them to return home, and for each one to go back to his own district, without harm of the king. And now you have been away for a longer period than this; and you have refused to attend, for what reason they do not know.

To this the king replied: "We have already fully reflected upon the fact that our people and commons⁴² intend to resist and plot to rise against us; and in face of such an attack there seems to be no better course than to call upon our relative the king of France and to seek from him advice and aid against the plotters; and it seems better to submit to him rather than to succumb to our aforesaid subjects.

[The envoys of parliament remonstrated that the king of France

⁴¹ This is the important phrase frequently referred to in the text. It might mean no more than a reference to the judicial activities of the king in his council in parliament. The circumstances under which it was used, however, together with those of 1376 and 1388, make this very unlikely. Those of 1388, and especially the famous Declaration of the Lords, make it almost certain that the phrase referred to the whole parliament as a court, with its own procedure, involving accusation by the Commons, judgement by the Lords. This is how it has been interpreted in the text.

⁴² *Populus noster et communes.*

was their chief enemy; Edward III and Prince Edward had fought in sweat and distress to conquer France. Heavy taxes were imposed to this end. They had been badly expended. All these things had happened through evil ministers of the king who had badly governed the king and the kingdom.]

Yet one other thing remains of our message, for us to announce to you on behalf of your people. They have it from an old statute,⁴³ and in fact not very long ago put into force, which is to be regretted, that if the king from any malignant design or foolish contumacy or contempt, or through wanton wilfulness or in any irregular way, should alienate himself from his people and should not be willing to be governed and regulated by the laws, statutes and laudable ordinances of the realm, with the wholesome advice of the lords and peers of the realm, but should headily and wantonly, by his own mad designs, work out his own private purpose, then it should be lawful for them, with the common assent and consent of the people of the realm, to depose the king himself from the royal throne, and to elevate to the royal throne, in his place, some near kinsman of the royal line.

England is now ruined by the insane advice of your ministers; and you not only refuse to listen to those who tell you about such conditions, but you also drive them out of your council. [The king gave way, promised to come to parliament in three days and to agree to their petition. He did this, removed the ministers and appointed the bishop of Ely chancellor with the consent of parliament. Michael Pole was accused and condemned to imprisonment in Windsor Castle. Henry Knighton does not say by whom: "they" condemned him. But he does say that Michael's property was confiscated "by judgement of parliament." The articles against Michael begin "The impeachments made by the commons in the [*sic*] full parliament against Michael Pole." Then the lords and magnates of parliament elected fourteen lords of the realm, who had the government of all the realm; they were to have power to enquire, treat, define and determine all matters, cases and quarrels arising from the time of Edward III until the present; similarly regarding the expenses of the king, his ministers and all others; the lords-proconsuls swore on the Gospels to regulate

⁴³ In the questions to the judges translated below, Richard refers to an "act," not a statute, though the language is inconsistent. Apparently there was an attempt in 1386 to make a statute out of the act of deposition of Edward II.

all business and burdens on the king and kingdom justly and loyally and to give justice to all who petitioned for it. The king swore to stand by their ordinances and to hold firmly whatever they did and ordained. Six of them, with the three officers aforesaid (chancellor, treasurer, keeper of the privy seal) could act, inquiring, treating and settling whatever case arose, this side of the ocean or the other side. None was to counsel the king to recall their powers.

The king's movements are then described, with the questions to the judges. There was a council at Nottingham, and then Richard returned to London. Thomas of Woodstock Duke of Gloucester, Richard Earl of Arundel and Thomas Beauchamp Earl of Warwick advanced on London. They demanded that the king's evil advisers be removed from his side and punished. These evil advisers were accused of counselling the king to seek help from France. The king's supporters advised him to attack the duke and earls and surround them like sheep. The citizens of London refused to fight. The Earl of Northumberland told Richard frankly that the earls outside London were his real friends, supported by the whole nation, the greater and smaller. He was supported by the archbishop of Canterbury and by the bishop of Ely, chancellor. The king yielded. The duke and earls were finally received in Westminster Hall by the king. They accused the five favourites and handed the king their case in writing. The king publicly promised⁴⁴ that he would cause the five to appear in the next parliament, to stand by the judgement of the laws of the land.

The king delayed summoning parliament, and the accused took to flight. The three magnates defeated the royal forces in the campaign of Radcot Bridge. Thomas of Woodstock, Henry of Derby, Richard of Arundel, Thomas Earl of Warwick and Thomas Earl of Nottingham—now, it will be seen, five, not three Appellants—came to the Tower. They demanded the imprisonment of all at the court who were suspected of treachery. The king agreed.

Not appearing in this parliament of 1388, the accused were outlawed, and it was decreed "by common judgement of parliament" that the outlawry should never be revoked.]

—From Henry Knighton, *Chronicon* ed. J. R. Lumby (R.S., 1895), 215-94. Part of the above is printed by Stubbs in *C.H.*, II, 497.

⁴⁴ The point is important. The original was: *Inde rex publice promisit eis, quod faceret illos quinque comparere in proximo parlamento sequenti et stare iudicio legum regni* (p. 248).

II. *Impeachments of 1386 according to Thomas of Walsingham*

The king was bitter, not only against the knights in parliament, but also against all the magnates; for these had supported the knights when they put forward many articles of dishonesty against Michael Pole and urgently demanded judgement against him. They had convicted him of many frauds and of certain betrayals of the king, which he was quite unable to disprove; and when Michael was present with his replies but could not deny the charges, the king blushed for shame on his behalf, shook his head and said: "Oh! Oh! Michael, see what you have done!" . . .

When these and many other defects had been proved against him he was removed from the office of chancellor, subjected to a fine namely [blank in MS.] to be paid to the king, and adjudged worthy of death by judgement of parliament. . . .

Process against Michael Pole

At this time, parliament having been continued, although the king might bear hardly the accusations made against Michael Pole and the others whom he rashly loved, he was nevertheless compelled, after many delays, to appoint triers and judges⁴⁵ who should have full power of hearing the case against Michael and against the others whom the knights had accused in parliament, and of giving judgement. These were appointed as judges, Thomas Duke of Gloucester, Richard Earl of Arundel, and [here a blank in MS.].⁴⁶ These were not slow to carry out the duty assigned to them. The king went away to other parts meanwhile; he would not be present at these judgements although it would have been to his advantage. At length, as has been said, Michael was convicted of many crimes and frauds, was judged to be worthy of death, and his goods decreed confiscated to the royal treasury. . . .

—From Thomas of Walsingham, *Historia Anglicana*
ed. H. T. Riley (R.S., 1864), II, 149–52.

III. *Impeachment of Suffolk, 1386, according to the Rolls of Parliament.*

. . . In this parliament all the commons assembled as one body and with a single purpose. They came before the king, the prelates, and the lords, in the parliament chamber, and made bitter complaint concerning the late chancellor of England, Michael de la Pole, Earl of Suffolk, who was there present, accusing him by word of

⁴⁵ *Auditores et iudicii diffinitores.*

⁴⁶ Thomas Beauchamp, Earl of Warwick.

mouth. . . . And on all these articles the commons asked the judgement of parliament. To which the said earl replied . . . And thereupon, after the response of the said earl to the accusations of the said commons, and the replies made to these [arguments] by the one side and the other, the said earl, at the request of the said commons, on account of the gravity of the offences thus charged against him, was arrested by the king's order and committed to the custody of the constable of England, and then released on bail. . . . [The grants, etc., made him by the king are to be re-seized into the king's hands.] But it is not the intention of the king nor of the lords, that this judgement shall extend so far as to cause him to lose the name and title of earl. . . . And for the misdeeds and offences aforesaid, of which the said earl through the insufficiency of his said responses has thus been convicted, it is adjudged that he is to be committed to the king's prison. He is to remain there during the king's pleasure. . . . And as to the three articles, that is to say concerning the nine lords, the keeping of the sea, and Ghent, it seems to the king and to the lords of parliament that the said earl ought not to be impeached by himself, without his colleagues who were then in the king's council. . . .

The lords and commons of the realm assembled in this present parliament, for the defence of the kingdom and of the sea, and for the protection of trading, granted to our lord the king in full parliament certain subsidies and aids on certain conditions: . . . [They are to be spent] . . . through the care and good administration of . . . [those] who have been ordained and assigned by our lord the king . . . to be of the continual council of our lord the king; and . . . [the subsidy] . . . shall under no circumstances be levied or collected by any one in any other way . . . [And the Commons petition] that the said lords and officials may have power to correct and amend all the defects that so greatly blemish your crown . . . ; likewise that a statute be made that no one, of whatsoever dignity, estate, nation, or condition, shall in private or in public be so held as to effect or counsel the contravention of what the said lords and officials see fit to decide, and this under severe penalty. Which matters, through your benignity, you have partially put into execution. It is prayed that at present you may please to carry out the remainder. . . . Response: The king so wills, providing that the commission and statutes asked in this petition shall be in effect for no more than one entire year. . . . [Many petitions are omitted].

It should be remembered that the king in full parliament, before its close, made public protest by personal word of mouth that, on account of anything done in the said parliament, he was unwilling that prejudice should be incurred by himself or by his crown, and that his prerogative and the liberties of his said crown should be saved and guarded. . . .

—From *Rot. Parl.*, III, 216–24.

IV. *The powers of the reforming council of 1386 according to the Statutes of the Realm*

By our royal authority, certain knowledge, good wish and free will, and by the advice and assent of the prelates lords and commons aforesaid, in full parliament, in aid of the good government of our realm . . . we have ordained, assigned and deputed . . . William archbishop of Canterbury . . . [etc.] . . . to be members of our great and continual council for a complete year after the date of this decree. They are to survey and examine, together with our aforesaid great officers, both the condition and management of our household and of all our courts places and offices, and also the condition and government of all our realm and of all our officers and ministers . . . both inside our household and outside. They are to enquire . . . concerning all rents and revenues . . . and concerning all manner of gifts, alienations and confirmations made by us . . . and all the faults and misprisions made in our household and in our other courts, offices and places. . . .

We give and commit, by this decree, by our own authority and by the aforesaid advice and assent, to our said councillors and to any six of them, along with our great officers aforesaid, full power and authority, general and particular, to enter our household and all its departments, and to enter all other courts, offices and places, as often as they wish, and to summon before them, where and when they wish, rolls, records, other muniments and evidence, such as they please. They are to amend and correct . . . all the faults . . . found in the said household and all faults and misprisions found in other courts, offices . . . and ministers . . . and all other faults and misprisions . . . done in our damage and to our loss, and to the damage and loss of our crown and the condition of our realm in general. . . . They are to receive and hear all manner of complaints and grievances . . . and make good and due remedy. . . . And of all the aforesaid matters . . . they are to make full execution according as

seems best to them for our honour and profit . . . and the relief of our people.

We wish also that if there is disagreement or difference of opinion amongst our said councillors and officers, the opinion of the majority shall prevail. We command and charge all . . . to be obedient to the said councillors and officers in the aforesaid manner . . . and aid them, as often and in the manner that they shall be informed by our said councillors and officers on our behalf. In witness of which we have caused these our letters patent to be made.

Given under our great seal at Westminster 19 November in the tenth year of our reign.

—From *Statutes of the Realm*, II, 95-8.

V. *Declaration of the judges on the king's prerogatives*, 1387

1. Firstly they were asked whether or not the new statute and the ordinance and commission made and published in the last parliament held at Westminster derogate from the regality and prerogative of the said lord our king. To which question they unanimously replied that they do derogate, especially in that they were made against the wishes of the king.

Also they were asked how those who procure the passing of such statutes, ordinances and commissions are to be punished. To this question they unanimously replied that they deserve capital punishment unless the king on his part shall wish them grace. . . .

2. Also they were asked how those who urged the king to consent to the making of this kind of ordinances and commissions should be punished. To which question they unanimously replied that they deserve capital punishment unless the king shall show them grace.

3. Also they were asked what penalty those deserve who have compelled or driven the king to consent to the making of the said statutes, ordinances and commissions. To which question they unanimously replied that they deserve to be punished as traitors.

4. Also they were asked how those are to be punished who prevent the king from exercising what belongs to his regality and prerogative. To this question they unanimously replied that they may also be punished as traitors.

5. Also they were asked if, when parliament has assembled, and the *negotia regni* and the cause of summoning parliament have been shown and declared by the king's command, and certain articles have been set forth by the king, upon which the lords and commons

of the realm ought to proceed in that parliament; if then nevertheless, notwithstanding that they were enjoined by the king to the contrary, the lords and commons could determine to proceed entirely upon other articles, and in no way upon the articles set forth by the king, until the king should have first replied to the articles set forth by them. [They were asked further] if the king ought to have the direction of parliament in this matter and to rule in effect, so that procedure ought to be first upon the articles set forth by the king, [or whether lords and commons ought first to have a reply on the articles set forth by them] before any further procedure. To which question they unanimously replied that the king ought to have the ruling in this matter, and similarly, in turn, in each other article touching parliament until the end of parliament; and anybody who does anything against this rule of the king should be punished as a traitor.

6. Also they were asked whether or not the king can dissolve parliament whenever he wishes and can command the lords and commons to depart. To which question they unanimously replied that he can. And if anyone proceeds to act after this, as if parliament is in existence, against the wish of the king, then they are to be punished as traitors.

7. Also they were asked if the king can remove any of his ministers and justices whatsoever, whenever he pleases, and examine and punish them for their offences; and whether or not the lords and commons can impeach those ministers and justices for their offences in parliament without the wish of the king; to which questions they unanimously replied that they are not able. And if anyone should say to the contrary he is to be punished as a traitor. . . .

8. Also they were asked how he is to be punished who has moved, in parliament, that act by which king Edward, son of Edward the ancestor of the present king, was adjudged in parliament to be no longer king should be placed as a statute ⁴⁷—by the inspection of which statute, a new statute and ordinance and commission were conceived in parliament. To which question they unanimously replied that both he who put forward the act and any other who, by pretext of such a motion, brought that statute into parliament deserve to be punished as traitors.

9. Also they were questioned whether the judgement given against the Earl of Suffolk in the last parliament, held at Westminster, was

⁴⁷ *Mitteretur pro statuto.*

erroneous and revocable, or not. To which they unanimously replied that if they were called upon to give this judgement, these justices and sergeants would not give it, for it seems to them that the judgement is erroneous⁴⁸ in all its parts.

In witness of all these things aforesaid, justices and sergeants have affixed their seals to this present. Witness the reverend fathers Alexander, archbishop of York, Robert, archbishop of Dublin, John, bishop of Durham, Thomas, bishop of Chichester, John, bishop of Bangor, Robert, duke of Ireland, Michael, earl of Suffolk, John Ripon, clerk, and John Blake, esquire. Given this place, day, month and year aforesaid.

—From the *Statutes of the Realm*, II, 102.

⁴⁸ Omitted, *tanquam erroneum*.

Chapter Eight

THE MERCILESS PARLIAMENT OF 1388

(a) *Some Recent Works*

CLARKE, M. V. "Forfeitures and Treason in 1388," in *Fourteenth Century Studies* (Oxford, 1937).

GALBRAITH, V. H. "A New Life of Richard II," in *History* (N.S.), XXVI-XXVII (March 1942), 223-39.

LAPSLEY, G. "The Parliamentary Title of Henry IV," in *E.H.R.*, XLIX (July and October 1934), 423-99, 577-606.

REZNECK, S. "The Early History of the Parliamentary Declaration of Treason," in *E.H.R.*, XLII (October 1927), 497-513.

STEEL, A. *Richard II* (Cambridge, 1941).

TOUT, T. F. *Chapters*, III.

"Parliament and Public Opinion, 1376-1388," in *Collected Papers* (Manchester, 1934), II, 173-90.

WILKINSON, B. "The Deposition of Richard II and the Accession of Henry IV," in *E.H.R.*, LIV (April 1939), 215-39.

"Tendencies in Fourteenth Century Constitutional Development," as listed in Chapter I, 18-29.

"The 'Political Revolution' of the Thirteenth and Fourteenth Centuries," in *Speculum*, XXIV (October 1949), 502-10.

(b) *Introduction to the Documents*

ONLY three documents are translated for this important crisis, but each of the three is very long. We are fortunate in our chroniclers. The first is Thomas of Favent, whose pamphlet, recently edited by Miss McKisack,¹ has thrown much new light on the parliament of 1388. Little is known concerning Thomas. He was probably a clerk of the diocese of Salisbury. His writing is wordy and involved. But he had plenty of

¹ *Camden Miscellany*, XIV (1926), *Historia Mirabilis Parliamenti* (1386), ed. M. McKisack.

information, he was accurate, and he was spirited.² We may almost guess that he himself was present in the parliament of 1388. Except for *Anonimalle Chronicle*, his work probably gives us the most vivid picture of procedure in a fourteenth-century parliament.³ The second writer, the Monk of Westminster,⁴ was by no means a perfect historian. He was so careless or hurried that he copied out two different narratives of the doings of parliament without noticing how the two sometimes differed from each other.⁵ Nevertheless, he was certainly very well informed about events in and around Westminster during 1388, and his history serves to confirm and supplement that of Thomas of Favent at several points. The third extract is from the *Rolls of Parliament*, which again give us the official interpretation including some important petitions of the Commons relative to the events of 1388.

The crisis of 1388 may be regarded as the logical reply of the magnates to Richard's assertion of the royalist position during the summer of 1387. Richard had taken the struggle into the country; the Lords and Commons brought it back into parliament, now the focus of their political strength. They began by an attack on Suffolk and others, not this time by Impeachment, but by Appeal. The first Appeal was made before the council established to reform the realm, at Waltham Cross on 14 November 1387; the second was made before the king at Westminster on 17 November.⁶ The method adopted was different from that of 1386, but the purpose was probably the same. The movement of 1388 was intended to finish what the movement of 1386 had begun.

This is not the accepted interpretation of the crisis. Few writers have credited the magnates with any far-reaching plans, despite the need for such plans after Richard's appeal to the country. The latest writer on the period does not seem to think

² Miss McKisack suggests that the original composition of this work occurred almost immediately after the dissolution of the Merciless Parliament; Preface, p. vi.

³ See T. F. Tout, *Collected Papers*, II, 817.

⁴ For the few facts, see J. Armitage Robinson in *Proceedings of the British Academy*, III (1907-8), 61-92.

⁵ T. F. Tout, *Collected Papers*, II, 185.

⁶ *Rot. Parl.*, III, 229.

that the Lords Appellant had any notions that can be dignified with the name of a plan.⁷ Stubbs might see a plan, but he could see no principles, behind the actions of the Appellants. The "proceedings of the lords appellant . . . were indefensible on moral or political grounds."⁸ Appeal established responsibility of ministers to the nation, not to the king only; but this, Stubbs seems to have believed, was not on a basis of law. T. F. Tout, though not primarily interested in the constitutional problem, saw clearly the importance of the crisis;⁹ but his interpretation has been questioned. On the whole, it is perhaps permissible to conclude that, according to the modern view, personalities, not principles, dominated the struggles of 1388, as they had, on the same view, dominated the crisis of 1386. There is some agreement that Richard's royalist claims of 1387 made the actions of the Lords in the Merciless Parliament necessary; but not that these actions were a clearly conceived response to the policy of the king.

In one important respect, modern writers sharply distinguish between the actions and aims of the magnates in 1386 and 1388. Mr. A. Steel, following Miss M. V. Clarke, suggests that the Lords Appellant¹⁰ never intended their attack on Suffolk in 1388 to begin in parliament. They intended it to come before the court of the Constable and Marshal of England, to be tried by Civil Law. This would apparently mean that, in face of the king's claims and threats of 1387, they had renounced the whole policy followed in 1376 and 1386. It would, indeed, tend to reduce the action of the Lords to the level of "puzzled and vindictive men." But this suggestion is still open to question. It is true that, according to Thomas of Walsingham, Richard, and not the Appellants, may have designated parliament as the place where Suffolk should be tried. The Lords, according to Thomas, appealed

⁷ A. Steel, *Richard II*, 137. They were simply "a group of puzzled and vindictive men, anxious to recover their powerful position in the state by somehow convicting the king's friends of treason, statute or no statute, and, what is more, if possible without parliament at all."

⁸ *C.H.*, II, 593.

⁹ *Chapters*, III, 432. See below, p. 258.

¹⁰ Gloucester, Warwick, Arundel and, later, Derby and Nottingham.

as traitors Robert de Vere, etc., threw down their gloves, and swore that they would show the truth of their appeal by trial of battle. It was Richard who said "do not let it be done in that way; but you will receive what universal reason dictates, according to the demand of law in the next parliament." This, Miss Clarke claims, seems to be the view of three important chroniclers.¹¹ The very important Monk of Westminster does not agree with it, however (Doc. II). According to him, the three Lords Appellant at Westminster "beg your highness that these persons might be kept in a safe place until the next parliament . . . and might be prosecuted by Common Law." The magnates seem to ask for a trial in parliament and also to assume that this trial will be by Common Law. The monk might be ignored in favour of the other three, if the other three were explicit. But two of them are not. The Appellants, Favent says (Doc. I), appealed Archbishop Neville, etc., of the crime of lese-majesty; thereupon the king agreed to the proof and prosecution of the appeal and designated a day for it in that parliament. There is nothing to show that this prosecution of the appeal in parliament is not what the Appellants had in mind. The same is true of the account in the *Rolls of Parliament* (Doc. III): "which appeal the king accepted; and on this he assigned a day to the parties at his first parliament." Knighton's account is similar. The view that the Appellants asked for the court of the Constable and Marshal seems to rest largely upon the testimony of Thomas of Walsingham alone.

Thomas's testimony, under these circumstances, should be very clear and explicit, but on close examination it does not prove to be so. He says that the Lords appealed Robert de Vere and the others, but he gives no indication as to where the Lords wished them to be tried. The fact that the Appellants threw down their gloves and offered trial by battle does not

¹¹ Favent, Knighton's continuator and Walsingham. But not, apparently, the view of the Kirkstall chronicler, printed by Miss Clarke and Professor Galbraith, in *B.J.R.L.*, XIV (1930), 126. The barons, he said, asked Richard to summon parliament at London, in the following February.

constitute evidence as to which court they proposed.¹² In any case, according to Thomas himself, it was the king and not the barons who later opposed proceedings in parliament: "the king had wished entirely to evade parliament on this occasion."¹³ That certainly sounds as if his opponents were pressing for it. This seems to be the more so since, in spite of his large talk, Richard was quite powerless before the Appellants. The latter were certainly in a position, throughout the crisis, and especially after Radcot Bridge, to have their appeal heard in whatever court they desired. The fact that it was heard in parliament suggests very strongly that this is what they had intended from the start. This argument is probably strengthened by the fact that such a procedure was in line with their policy of 1386.

Perhaps the new theory is hardly proved either by the later assertion of the judges that the Appeal of 1388 was "not made nor affirmed according to the order which either the one or the other of these laws [Common or Civil] requires" (Doc. III). When the judges gave their opinion, the Appeal was already, according to the *Rolls of Parliament* (Doc. III), before the assembly. Presumably they were pronouncing on the validity of the existing procedure, not of some alternative which had earlier been proposed. The simplest hypothesis seems to be that they declared the procedure in parliament to be invalid on the basis of both the great legal systems by which it might conceivably be sustained. Thus the opinion, important though it is, seems to provide no evidence either for or against the theory that the Appellants had desired to have their appeal before the military court.

If we venture to regard the theory that the magnates wanted a trial before the military court as not yet completely established, we have to fall back on the older view that the Appellants intended the trial in 1388, as in 1386, to be before parlia-

¹² Trial by battle was a method of proof, not the particular procedure of any one court. What Richard may have offered to the Appellants was not a different court but a different procedure. "Do not let it be done in that way," he is reported to have said.

¹³ But Thomas does not imply that Richard wanted any other court.

ment, the High Court of the Realm. We must believe that they regarded parliament as having some attributes parallel to those of a court of Common Law, and that this may have been one reason why they could describe their indictment as an Appeal.¹⁴

Mr. Steel thinks that the new procedure was "little better than lynch law."¹⁵ Stubbs denied it the sanction of law and equity. In favour of these assertions is the fact that the magnates departed, in 1388, from any existing legal system. They adopted dangerous and unconstitutional methods, as Richard had in 1387, in imposing their new concept of law upon the king. On the other hand, they did not simply fall back on expediency, or even on a parliamentary "bill of attainder," but proclaimed¹⁶ their adherence to a new law and new process of parliament (Doc. III). It is true that only the Lords of parliament could determine what these were.¹⁷ In this sense, they substituted their arbitrary pronouncements for the established law. On the other hand, they spoke in the name of parliament; and there had long been a desire to give parliament some such attributes as they now claimed. Their claims were far from being *ad hoc* improvisations, to justify political vengeance on the king's friends. It might be argued that the fact that the law and procedure of parliament were defined by the Lords and not by the king was not a sign of lynch law but of a search for a new kind of law. It was not the king's law, but nevertheless it was not intended to be unlawful; it was intended to be the law of parliament.

This does not dispose of the criticism of Bishop Stubbs and Mr. Steel; but at least it suggests some of the arguments the

¹⁴ Miss Clarke cites Stephens (*The Criminal Law of England* (London, 1883), I, 151, 247) in support of her argument that the appeal of 1388 was altogether different from appeal at Common Law; but Stephens does not seem to have indicated a belief that they were altogether different.

¹⁵ *Richard II*, 152. The question of the difference in procedure between Impeachment and Appeal is in need of further research.

¹⁶ But cf. A. Steel, *Richard II*, 152.

¹⁷ *Ibid.*: "No one knew what to do when there was a hitch in the proceedings, because all laws had been thrown overboard." But it can be argued that a new law had been shipped on board, and that the Lords knew what to do.

magnates might have used in self-defence. The court of parliament, the Lords asserted, was a court and a law to itself. It was not governed by the laws of lower courts, but they were governed by its ordinances and establishments. It was the proper place for trying high crimes which touched both the person of the king and the welfare of the realm,¹⁸ whether committed by peers or others. Those accused were to be tried by the court, the law and the procedure of parliament, all of which were good and effective in this case. The Lords of parliament were the judges, by their ancient franchise and liberty, and by the ancient custom of parliament. In their capacity as judges, they acted with the "assent" of the king. This is the first formal and public definition of the High Court of Parliament. It set forth, clarified, extended and defined the baronial ideas which lay behind, or had grown out of, the procedures of 1376 and 1386. It was enrolled in the Parliament Roll and received official acceptance (Doc. III). It thus constituted a landmark in the history of the assembly, and even, perhaps, in that of the constitution as a whole.

It is natural that it should have been the subject of much discussion. That of Professor Tout seems to be the most illuminating.¹⁹ The declaration that parliament, as a law maker, could override the executive officers of the law involved, he argued, an assertion of the ultimate sovereignty of parliament which, after a lapse of centuries, was to become the received theory of the English state. Of more immediate significance, he suggested, was the claim of the Lords to be the sole judges of the law of parliament. This was the first adumbration of the "House of Lords" as the supreme law court, including the further consequence of judgement by legislative act, which was to prepare the way for attainder. If the assent of the king was assumed for the sake of form, it is clear that the king was already reduced to the condition of a passive instrument of the will of parliament. Thus, he concluded, the theory

¹⁸ Both in Impeachment and Appeal, the argument seems to have been that the business was, to use an old expression, *negotia regni* as well as *negotia regis*.

¹⁹ *Chapters*, III, 432.

of parliament developed hard upon the recent declaration of the theory of monarchy by the judges. In the event of disagreement between the two powers, there was no way out, except an appeal to force.

Professor Tout's view has been attacked by more recent writers. Mr. Steel believes it has been "severely damaged." He prefers a "more practical and cynical interpretation."²⁰ But this, like that of Miss Clarke, seems to be based on a belief, which we have already seen cause to question, that the Lords Appellant had originally planned to have their appeal heard in the court of the Marshal and Constable.²¹ Perhaps we shall find it wiser, after all, to take as our starting point for a discussion of the declaration the penetrating observations of Professor Tout.

Historians may modify Tout's conclusions; but it is likely that they will do this by an elaboration of detail rather than by denying his main arguments. What Professor Tout meant by the ultimate sovereignty of parliament may seem, to some, to be rather doubtful. In effect this may have been, as he seems to imply, the sovereignty of Lords and Commons, arrogating to themselves the attributes of the parliamentary assembly; but in theory, as far as there was any theory on this subject, we may safely assume that it was the sovereignty of the king together with the "estates." The concept of sovereignty which actually lurked beneath the surface of the Lords' Declaration, and was to be worked out in the future, was neither the sovereignty of the king nor that of Lords and Commons, but the sovereignty of the king in parliament, comprising King and Commons and Lords. This somewhat elusive distinction is worth suggesting because it probably had important consequences in the development of the English state.

Similarly, Professor Tout's observation on the "house of

²⁰ *Richard II*, 151.

²¹ It was, according to this view, only because the Appellants failed to induce a "moderate majority in the lords" to approve of this plan that they consented to a hearing in parliament. But it is hard to see the action of the "moderate" lords, or the evidence for their rejection of the Appellants' plan.

Lords" as supreme law court should perhaps be elaborated. This was what, in effect, was established in 1388; but it was not the theory that was asserted. It was not the house of Lords, but parliament, which was said to be the High Court, and probably for a very good reason. It was only by claiming judicial attributes for the whole assembly that it was possible to escape from the tradition that justice in parliament, even with the Lords as judges, was the function of the king.

Finally, it may be suggested, the sovereignty of parliament in 1388 was asserted specifically in regard to its judicial, not its legislative, functions. The Declaration of 1388 did not, perhaps, except indirectly, pave the way for judgement by legislative act and attainder. In some ways it may not have gone quite as far in its consequences as Professor Tout seems to have believed; but its importance, nevertheless, remains essentially what he portrayed.

On the other hand, although the doctrine of 1388 carried a step further the doctrine of 1386, it also showed evidence of the same inconsistencies and evasions which had all along marked the position of Lords and Commons and which were, perhaps, an inevitable consequence of the radical nature of some of their reforming ideas.

To challenge the age-old position of the monarch, Lords and Commons had to act, not on their own rights, but on the rights of parliament. They had to arrogate to themselves functions which they could really claim only for both the king and the "estates." They had to assert a theory of the High Court of Parliament, though in fact judgement may have been given in 1388, as in 1376 and 1386, only by the Lords. These inconsistencies were afterwards (and probably at the time) embarrassing to the opposition; they were to be used by Richard II to his own advantage; but they could not be avoided in 1388 without a revolution in political theory which could not conceivably as yet have been carried out.

In their declaration in parliament, the Lords did not, and could not, define either the position of the monarch on the

one hand or of the Commons on the other.²² They could include the Commons in the new court of parliament merely because they were present; but this constituted very dubious membership in the High Court of the land. On the other hand, they could not exclude them and yet make claims on behalf of "parliament"; for, despite some modern views to the contrary, we may venture to believe that the Commons were an integral part of parliament long before 1388. Similarly, they could not exclude the monarch from the court of parliament, though in this case they may have wished to; for no man could as yet deny the assertion of the *Modus Tenendi Parliamentum*, that the king was the beginning and end of the assembly. Thus the position of the Commons in the court of parliament was, and remained, uncertain even after their formal rejection of the rôle of judges in the first parliament of Henry IV. The position of the ruler was, and remained, ambiguous for the remainder of the Middle Ages. The declaration of the Lords provided material for sharply conflicting views of the nature of parliament both in the seventeenth century and in modern times. But it was still a landmark and perhaps a turning-point in the history of the assembly, possibly surpassing in importance even the Statute of York.

It is not surprising, in view of the ambiguities in the theoretical basis of the proceedings in 1388, that there were also ambiguities in the chronicle and record accounts. The king presided, it was generally agreed, and judgement was declared by John Devereux, steward of the king's household, "by commandment of the king" (Doc. II). The proceedings were officially before the king and the Lords (Doc. III). The Lords adjudged Robert de Vere, Michael de la Pole, and Robert Tresilian to be guilty; they condemned them "as judges of parliament in this case, by assent of the king" (Doc. III). That was exactly their position as set forth in the Declara-

²² The Lords were the only "estate" about which there was no ambiguity. They retained the functions accorded to them in the declaration until modern times. But even they could not include the clergy among their number for the purpose of judgement; see the protest of the clergy recorded by Thomas of Favent, translated p. 272 below, and the translation of the *Rolls of Parliament*, p. 281.

tion of 1388. But these niceties were lost in the more general recording. Thomas of Walsingham talks of the "judgement of parliament" on John Salisbury and James Bernays.²³ The Monk of Westminster talks of "the process and execution of the said parliament according to the manner of the court at Westminster." It seems clear that, according to some opinion, it was simply "parliament" that was the High Court in 1388.²⁴ The clerk of parliament, compiling the official record, was careful to express the correct form of procedure; the chronicler was free to describe the procedure as it appeared to the people at large. The people were beginning to confuse parliament with the Lords and Commons. They knew that the direction of the proceedings of 1388 by the monarch was a pretence: Richard II, attempting to protect his friends and servants in the Merciless Parliament, was as helpless as Charles I awaiting the outcome of the attack upon Laud. Thus the same tendency was apparent, in 1388 as in 1386, to identify parliament with the Commons and the Lords.

We may now turn, at length, to a discussion of some of the difficulties involved in this interpretation of the crisis of 1388. To many historians, the greatest of all will lie, of course, in the suggestion that when the Lords, in 1388, claimed formal recognition of a court of parliament, they claimed something which was new. This difficulty is fundamental, but it has

²³ Document II, Chapter VII. He also talks of James Beauchamp of Holt being hanged "by decree of the same parliament." The Monk of Westminster makes the Duke of Gloucester and his colleagues declare that they would maintain that Nicholas Brember was a traitor "in any way that parliament [not the king] shall award." The monk makes it clear that the Lords gave judgement on Nicholas, by direction of the king; but he goes far in suggesting that the court was parliament, and even that it consisted of the Lords and Commons. The Archbishop of Canterbury, towards the end of the proceedings, begged the Lords and Commons, not the king, for a respite on the execution of the sentence passed on the justices. In this, the monk was reflecting the facts, as opposed to the theory of these proceedings. It is interesting to notice that he may be the first chronicler to describe persons as being led to the bar of the House to be tried; *Polychronicon*, IX, 156.

²⁴ But not according to the writer of the distant Kirkstall Chronicle; *B. J. R. L.*, XIV, 127. One of his phrases is striking. The accused, he says, were produced for judgement "before the lords of parliament, and in the Hall at Westminster, in the hearing of all the people of parliament."

already been referred to. Others arise out of modern differences, not about parliament in 1388, but about the magnates. In the above interpretation of this crisis, the magnates are credited with more understanding of political issues than has sometimes been given them. On the one hand, historians have argued, they stumbled blindly into forms of procedure which they did not properly understand; on the other, the procedure which they did adopt does not suggest any principles of parliamentary action, or any concept of the supremacy of the law.

This last point is illustrated, it has been said, by the steps the magnates took to secure the condemnation of Nicholas Brember. These show that the Lords did not themselves believe in the supremacy of law. They were determined on the condemnation. They found it very difficult to get support for it even from a committee of their own house. They had to change the grounds from simple treason to misprision (i.e. criminal concealment) of treason.²⁵ Even this was established only by a pressing examination of witnesses from the city of London. "It is hardly necessary," Mr. Steel concludes,²⁶ "to emphasize any further the state to which parliamentary appeal of treason had reduced the conception of justice."

If this means that Nicholas did not get absolute justice, it is true. He was executed mainly for political reasons. If it means that there was no principle of justice in the procedure by which he was executed, it may possibly be untrue. Perhaps the absolute justice or otherwise of his condemnation is not the really important point at issue. The important point seems to be that he had a formal trial, with all solemnity, before the highest tribunal in the land. There was a formal procedure, a hearing of the charges, the testimony of witnesses, a special committee of investigation, a serious discussion, in which the king himself took part. Some of Miss Clarke's animadversions against parts of this procedure would seem to be a little strong.

²⁵ This was, however, good also at Common Law.

²⁶ *Richard II*, 157. He follows Miss Clarke, *Fourteenth Century Studies*, 141. Some recent comments on the trial have been made by Miss Ruth Bird, *The Turbulent London of Richard II*, 93.

The trial did not follow the forms of Common Law. It did not have to. It followed the Law and Procedure of Parliament. According to these, Brember got justice. His condemnation was by the judgement of all the community. It is debatable whether this was "lynch" law, the product of uncertainty and confusion. At least, it was the logical working-out of ideas of law which the magnates had publicly and formally set forth in the Declaration of 1388.

The question of whether or not the magnates had any principles of parliamentary action leads to a somewhat involved discussion. Miss Clarke, in spite of her massive knowledge of the period, may have denied consistency and principles to the Appellants on grounds which they would probably have considered to be irrelevant; and may have judged them by aims which were at variance, we may venture to argue, with those which they probably followed and seem, indeed, to have openly professed. She accuses²⁷ the leaders of the Lords of a lack of courage and of tradition, which made it impossible to maintain the full claim of parliamentary supremacy in these proceedings. They were not bold enough, Miss Clarke says, when the committee of Lords did not support their demand for judgement of death on Brember, to make a parliamentary declaration of treason—that is, a bill of attainder. But this, we may venture to believe, was exactly, and above all, what they did not want. They wanted parliament to function, not as a legislative assembly, but as the High Court of the Realm. If they had passed a parliamentary declaration of treason, they would have dealt a blow at the whole edifice of the High Court of Parliament which had been laboriously built up since the accession of Edward II. They would have substituted legislative for judicial procedure and denied the competence of the highest court of the realm which they had just publicly proclaimed. Miss Clarke's very accusation shows, we may venture to suspect, that she did not really understand what it was that the magnates were actually striving for in 1388.

²⁷ *Fourteenth Century Studies*, 141.

The same suspicion occurs with regard to the accusation that there was a complete failure in 1388 to understand the true doctrine of parliamentary supremacy.²⁸ This must imply, it has been urged, that any given parliament is competent to reverse the acts of its predecessors. But the implication was denied, it is said, by a futile attempt to bind all future parliaments not to revoke what the parliament of 1388 had done. In line with this attempt, it is also asserted, was a still more naïve declaration, that no future parliament was to "imitate its actions." Finally, at the very end of the session, parliament legislated to protect dower and entailed estates from forfeiture in all future crises, but not in the existing one. "No further comment is necessary," Mr. Steel concludes, following Miss Clarke, "on the 'principles' of the merciless parliament."²⁹

If these conclusions are true, they do indeed make it difficult to see any principles or consistency behind the actions of the Lords and Commons in 1388. But it is questionable if they are altogether true. With regard to the first accusation, Miss Clarke correctly recorded³⁰ the enactment asked for by the Commons: "all who sought to reverse the judgements of this Parliament should be condemned and punished as traitors."³¹ But it seems to be possible from this wording that the Commons wanted only the judgements of the parliament to be inviolable. Nothing was said of legislative acts. Thus the Commons may only have been asserting the judicial supremacy of the High Court of Parliament. But whether this consideration would have caused Miss Clarke to modify her opinion it is not easy to decide.³²

²⁸ This statement and the arguments which follow it have been taken from A. Steel's *Richard II*, 152-3.

²⁹ A. Steel, *Richard II*, 153.

³⁰ "Forfeiture and Treasons," *Fourteenth Century Studies*, 142, 143.

³¹ The matters declared inviolable were, in point of fact, the "appeals, prosecutions [*pursuites*], accusations, process, judgment and execution." Miss Clarke translates *pursuites* by "pursuits" which, if correct, would considerably affect the argument above. I have translated it "prosecutions" in the the documents below.

³² Towards the end of the parliament, Lords and Commons took an oath not to consent or suffer that any judgement, statute or ordinance made in the present parliament should be annulled; *Rot. Parl.*, III, 252. In comparison with the passage quoted above, prohibiting the reversal of judgements, there seems to be a distinction implied between judgements and legislative acts. Reversing the

Similarly, a declaration that no future parliament was to imitate the actions of 1388 would have been naïve indeed; but it may fairly be questioned if it was issued. The exact wording of the declaration is given below (Doc. III), and need not, perhaps, be discussed at length. The Lords apparently asked for Richard's formal sanction for all their acts; but they do not seem to have gone beyond this demand. Nothing they asked for would seem to have prevented future parliaments from imitating their actions.

Finally, the clause which apparently protected dower and entailed estates in all future crises but not in 1388 would seem to be open to various interpretations. It provided that, since divers points had been declared treason which were not in the statute (1352), no judge should have more power to give judgements in cases of treason than he had before the parliament of 1388. This, Miss Clarke argues, "proves that the irregularity of the whole proceedings was understood." Perhaps it does not prove quite as much as this. It may possibly show only, what the Lords insisted on throughout, that the Court of Parliament was different from all other courts. The fact that the judges of parliament could try cases of treason other than those of 1352 did not empower other judges to do likewise.³³ This may have been bad law, but perhaps it was not a recog-

former was forbidden; the individual who sought it was guilty of treason. Annulling the latter was not forbidden. Individuals were free to seek it without penalty. But Lords and Commons took an oath not to exercise their right in this particular case. The oath seems to have been a clear recognition that a future parliament was competent to reverse the acts of its predecessor. All that the Lords and Commons could do, if they wished to prevent such a reversal, was to pledge each other that they would not agree.

³³ This is perhaps also the explanation of the enactment to the effect that it was not the intent of the king or Lords or Commons that, by force of this statute (affirming the acts of Appeal, etc.), heirs by entail or dower should be prevented from having their rights according to the Common Law. Miss Clarke thought that this meant that the judgements of 1388 were to go no further than the statute law allowed. In this case it would, of course, have simply annulled the confiscations of entailed estates which were part of the judgements. But Miss Clarke shows clearly that this did not happen. Perhaps it was never intended that it should. The proviso may have been simply another example of the sharp distinction which Lords and Commons made between procedure and law in their High Court of Parliament and those of the courts of Common Law.

nition of the irregularity of the proceedings of 1388. It was merely a recognition of the uniqueness of the High Court of the Realm. The whole subject deserves more discussion than can be given in these pages. At least enough may have been said to suggest that, in spite of Miss Clarke's brilliant spade work, there is possibly much detailed investigation which still remains to be done.

On the whole we may venture to question whether the Lords and Commons did fail to understand the implications of their own claims and actions in 1388. There is at least a possibility that they had fairly consistent principles which they followed to the end. Nothing contained in their Appeal they declared (Doc. III), or the judgements given upon it, should be construed to the default or dishonour of the king's person, or should turn to his prejudice. Nevertheless, the judgements were to have full force and virtue, whatever might be alleged to the contrary. They never wavered in this determination, though they went out of their way to avoid any attempt to make every action of the Lords Appellant a precedent for the future, or to destroy the existing practices of Common Law. They did show some moderation; but none in their enforcement of the new, strongly defined concept of parliament as the High Court of the Realm.

Perhaps the other problems of this parliament may be dismissed with brief consideration. Whether or not the old reforming committee of 1386, with its remarkable powers, was continued in existence by the parliament of 1388 is still a problem. There was no formal reappointment, and its term of office had, of course, expired. The Monk of Westminster said that the bishops of Winchester and of Bath and others were appointed to be continually attendant on the king, as one of the last acts of the Merciless Parliament; but their exact position remains obscure. Some reforms were made in the administration, but they were not very drastic. After the end of the session, Richard "of his own free will" renewed his coronation oath and received the homage of Lords and Commons, promising to be a good king and lord. The Bishop of London

said mass, and the Archbishop of Canterbury preached a sermon on the sanctity of oaths.

On the whole, there seems to have been little attempt to rivet any formal control on Richard. But, if the above suggestions are correct, a great political and constitutional revolution had already been accomplished. A concept of parliament had been formulated, on the precedents of 1376 and 1386, which entailed a new relationship between the Lords and Commons, the ministers and the Crown. These were so important, perhaps, that they called for a second coronation compact between ruler and subjects.³⁴ Solemn oaths were taken, fortified by threat of excommunication on the part of all the bishops.³⁵ The victory of Lords and Commons may have seemed, at length, to be final and complete.

In reality, as we now know, it was little more conclusive than that of 1386. This, at first sight, would seem to be surprising. The Lords and Commons had dealt a major blow at the king's supremacy in the state: indeed, his supporters had already warned him, at the height of the crisis, that if he failed in his opposition to the Appellants, he would become the shadow of a king. The Appellants had pushed the doctrines of 1376 and 1386 to their logical conclusion. They had brought out into the open, and beyond misunderstanding, the implications of the High Court of Parliament and the new dominance of the national assembly by the Commons and the Lords. They had bound the king and the nation to a permanent acceptance of their actions and their judgements.³⁶ No undoing of these was likely in the political arena of their choice. Richard was for the moment a monarch subject to his own people. The greatest instrument of government would seem to have been wrested by the community of England, acting through the Appellants, temporarily from his hands.

Yet appearances were probably deceptive. Even now the issue was not decided. The monarchy was older than the parliamentary assembly. Its attributes could not be trans-

³⁴ But see also Chapter I above.

³⁵ Monk West., 183.

³⁶ Subject to the distinctions suggested above.

formed in one short decade by parliamentary action alone. Its traditions stretched back beyond the "modern" institutions by which the Lords and Commons sought to control it, to the Anglo-Norman and Angevin "despots" and beyond them, to kings whose personal actions and orders had contributed much to the welfare of the state. The community had triumphed over Richard through the new machinery of government; but they had not stripped him of his executive power and the vast undefined prerogatives which were the essence of his "regality." Indeed, the final irony of the situation was the fact that the royal power which Richard had led to defeat was in many respects greater than it had ever been before. Defeated in one battlefield, it was inevitable that he would continue the engagement in another. All his own instincts and all the traditions of his ancestors made it impossible, at this stage, to surrender completely the glorious prospects that had been opened up for the English rulers by his great predecessors Edward I and Edward III. The last battle of Richard's reign would be the battle of the prerogative. It would be for the inner keep of the royal position, that defended later by the Stuarts; a fight, as far as Richard II was concerned, to win absolute triumph or to suffer complete and irremediable defeat.

(c) *Documents*

- I. Thomas of Favent on the events of 1386-8.
- II. The Monk of Westminster on the events of 1388.
- III. The Appeal of 1388 according to the *Rolls of Parliament*.

I. *Thomas of Favent's account of the Merciless Parliament of 1388*

During this period, however, the three magnates mentioned above, that is, the duke and two earls, gathered their forces together on the thirteenth day of November of this year [1387] at Waltham Cross in Hertfordshire, and they sent for the other members of the reforming commission who were in the palace of Westminster with the king. There, in writing, they appealed the five lords of straw, referred to above—the archbishop of York, the duke of Ireland, the earl of Suffolk, Robert Tresilian and Nicholas Brember—of the crime of

lese-majesty; and they declared that they would prosecute their appeal, and prove their indictment according to law, under a pledge of their goods and of competent sureties. They made all the other commissioners partners and co-appellants in their appeal, and they asked these to report the matter to the king.

When report of what they had done reached the ears of the king, he sent to enquire from them what was their proposal and wish. They sent back the following reply: "The interests of the state demand that certain traitors gathered around you should be deservedly punished and driven away, for it is better that one man should die for the people than that all the race should perish." They asked also that there should be a deliberation, with a safe-conduct for them whilst they were going and returning.

The king commanded them, when he had learned their wishes, to come to him; and they went to Westminster and to the king, sitting on his throne in the great hall, in the midst of his commissioners. The three magnate-appellants with a great multitude of supporters entered the hall and saluted the king very humbly and all together, with deeply bended knees. But they again put forward the charge in the same manner and form as at Waltham Cross and appealed the archbishop, the duke, the earl, Tresilian and Brember, of the crime of lese-majesty. The latter were at that time hidden in the obscure prison-cells of the palace, in secret hiding places, as Adam and Eve first hid from God. They fled, having no mind to be discovered.

Thereupon the king agreed to the proof and prosecution of the appeal and designated a day for it in that parliament, namely the day after the Purification of the Blessed Mary. . . .

[Robert Vere gathered forces together, and fought the campaign of Radcot Bridge in which he was defeated. The victorious magnates again marched on London and sought the king. After a dispute concerning their security, they were allowed to take virtual possession of the Tower of London.]

[The Lords Appellants] appealed the fugitives thrice in the manner and form aforesaid.

When this appeal had been made, the king voluntarily took an oath on his soul that he would keep to them and what was to be confirmed by the counsel of the commissioners, as a good king and a just judge inasmuch as the order of right, of reason and of equity demanded. . . .

[Then] it was proclaimed, not only in the king's presence but also throughout England, that the said fugitive traitors should appear personally, as if they had been peremptorily cited, on the above stated day of parliament, that is, the day after the next Purification of the Blessed Mary, to answer for their false treachery according to what should be charged. [The commissioners proceeded to dismiss many of the king's officers, such as John Beauchamp the steward, Simon Burley, sub-chamberlain etc.; the judges, Robert Beaknap, John Holt, etc., were removed.]

And . . . the general parliament was begun on the second of February, in this manner. Everybody, of both estates, the eminent and noble men of the realm, gathered together in the White Hall of the king at Westminster. When the king had arrived and taken his seat for the tribunal, the five very noble appellants . . . entered the great hall together, arm in arm, accompanied by a large throng, and wearing cloth of gold. They regarded the king and then together bent the knee to him in salutation.

There was a mass of people present in the hall filling even the remote corners. But what do you suppose will be seen there of the lords of straw described above or of their supporters? Nicholas Brember indeed, captured earlier, was ordered to be thrust roughly from Gloucester to prison in another place.

When, therefore, the laity had taken their seats on the left hand of the monarch and the clergy on the right hand, according to the ancient custom of parliament, the chancellor took his stand where he was visible to all, behind the king, and made a certain pronouncement concerning the cause and business of the parliament, classifying these as is the custom.

After this, the five lords nominated Robert Plessington, a prudent knight as their deputy speaker. He said: "Here is the duke of Gloucester, who has come and is present to purge himself concerning the treachery imputed to him by the fugitives." Then the chancellor, receiving the reply verbally from the king said, in excusing the duke: "Lord duke, you have sprung, in origin, from such a worthy and royal stock and you are so near the king in collateral line, that there is no suspicion of imagining such things of you." The duke thanked the king, bending the knee low with his four associates. Then, silence having been commanded, the five magnates put forward in writing articles of accusation concerning the treachery described above.

Geoffrey Martin, clerk of the crown, declared them, by reading out the articles rapidly, in the midst of parliament, during the space of two hours. The hearts of some were struck with sorrow by the terrible things contained in the articles; others made their faces swollen with the tears that ran down them. When the reading of the articles was finished, the king obligingly interrupted to ask what sentence should justly and conveniently be imposed regarding the shameful betrayal, according to what had been alleged and proved, so that due execution might be made on the persons of the fugitives. So much for the first day. The next day was vexed with councils and nothing was done, and therefore I will not proceed according to what was done each day; I will only touch upon the more important acts of the parliament.

When, therefore, the process against the fugitives had gone on for three days, the chancellor of England alleged in the name of the clergy, in full parliament, that they would not in any way continue to partake in such a case, and that they did not wish to be present at a time when any judgement of blood was under discussion. To confirm this, the clergy published a protestation in writing, which was read out in public; and they said in excusing themselves that they did not make this excuse either because of favours received or in fear of enmities or because of bribes, but because they wished to preserve the sanctions of the canons and all the laws, which persuade and coerce clergy to refrain from such an abominable action.

The knights of the shire had met in the chapter-house of the abbey, to deliberate about their own matters and opinions, and the clergy also sent their protestation to them, for their notification.

Meanwhile, notwithstanding that protestation, the five magnates demanded³⁷ sentence of condemnation against the four insolent offenders. And when the said community of the people had come quickly to the said king, and the protestation of the clergy had been published and in like manner read before them, nevertheless the five magnates still persisted in demanding judgement against those insolent men. Thereupon, the clergy rose up and, for the time being, went out into the chamber of the king next door.

Nevertheless the king . . . put off the process, to be continued later. . . . At length on 11 February, when nothing could be alleged for those absent, whereby the grave sentence of condemnation should not be finally passed, John Devereux steward of the court and

³⁷ *Petierunt.*

holding the place of the king, adjudged the archbishop, the duke, the earl and Tresilian to be drawn through the city from the Tower of London to Tyburn, and then forthwith hanged from the gallows. All their goods were to be confiscated and their descendants were not to enjoy them.

—From the *Narracio de Modo et Forma Mirabilis Parliamenti*, of Thomas of Favent, ed. Miss M. McKisack (Camd. Misc., XIV, 1926), 1-17.

II. Events of 1388 according to the Monk of Westminster

And thus they then firmly appealed of treason Alexander archbishop of York . . . etc. That these are the vilest traitors, they were willing to prove against any opponents, excepting nobody save the king. Nor, they said, would they desist from what they had begun, until they had the said traitors in safe custody, to reply, in the forthcoming parliament, to the charges made against them.

[The duke of Gloucester, the earl of Arundel and the earl of Warwick came to the king at Westminster. They requested the king to listen to a statement on their part from Sir Richard Scrope. Scrope said that the rising of the Appellants was principally on account of five people close to the king.]

Whom these lords appeal of treason made by them against both the king and the kingdom; and they wish to stand by their appeal notwithstanding denials. Wherefore they beg your highness that these persons might be kept in a safe place until the next parliament, and deprived of favouring protection, might be prosecuted by common law for their misdeeds, if these should happen to be established. The king granted their petition and took the case into his hand, fixing the meeting of parliament for the third day of February.

[Four of the five absconded. Only Nicholas Brember could be taken. Richard forbade the chancellor to issue writs for the assembly of parliament, but then changed his mind.]

When the lords heard how the king had directed threats against them, they proposed to depose him, both because he had not kept his agreement with them, and because it appeared that he preferred to be governed by false traitors than by his nobles and by faithful lords who loved the realm. The earl of Warwick opposed this³⁸

³⁸ A. Steel, *op. cit.*, p. 139, thinks this opposition not unlikely, but attributes it rather to Derby; follows Wallon.

and straightway turned them from this opinion by the following words, "Let us not see," he said, "such a glorious prince, descended from such a distinguished stock and from such a noble race, to whom I, with the rest, offered in person homage and oath of fealty at his coronation, now deposed and cast down. Truly, little honour or glory can be acquired by us in this way, but rather dishonour for us, and for our heirs eternal shame. . . . [The magnates gathered forces to attack Robert Vere in Northampton. Vere was defeated. The lords arrived in London and sent messages asking Richard to deliver to them those who were notorious for treachery, or, to give them security and authority to seek out such persons. The king refused.]

Finally they declared that it was necessary for him to correct his mistakes and then to subject himself to the rule of the lords. If he refused to do this, he should certainly know that his heir would unquestionably be of complete age and would freely desire to give proper obedience to them, for the profit of the kingdom and his own salvation, and to be governed by their rule.

The king was stupefied at this and said that he was willing to comply with them as was proper in the things which were permitted, and to be governed by their wise counsel, saving his crown and also his royal dignity; and this he affirmed by oath. When this had been done, the lords told him that he should in no way fail them in what he had promised, or change his mind in the future, through force or deceit, about the aforesaid matters, as in the past, if he wished to enjoy his regality and his crown.

Therefore, on the last day of December, they came to Westminster, where they treated concerning those who stood near the king, whether these were worthy to continue standing at the king's side or not. [They investigated many officers and removed some of them.] And at a council held at Westminster on the first of January they caused a number to be arrested, namely Thomas Trivet, Simon Burley . . . etc. . . . who were all sent by the lords to different fortresses for custody until the next parliament. [Certain persons were made to abjure the court.]

Also, for the continuous government of the king, they ordained the bishops of Winchester and Bath, John Cobham, Richard Scrope, John Devereux whom they also created steward of the king's household and constable of Dover castle. On the second day of January they removed from the court all the familiars, especially the said

lords who were nearest to the king, and, at their will, substituted others in their place. This act filled the heart of the king with sadness, although at that time he could not do otherwise. Therefore he patiently suffered these and other things. . . .

On the III day of February the king held a parliament at Westminster, in which Thomas duke of Gloucester, Henry earl of Derby, Richard earl of Arundel, Thomas earl of Warwick and Thomas earl of Nottingham declared themselves innocent, publicly and before all the parliament, of ever agreeing to, thinking or imagining, the death of the king. . . .

These same lords urgently petitioned that Alexander archbishop of York, Robert Vere duke of Ireland, Michael Pole earl of Suffolk, Robert Tresilian judge and Nicholas Brember knight of London, should be brought before the whole parliament, to reply orally to the articles put forward in their appeal. But the king prorogued the matter until the Thursday after Ash Wednesday because Lent was now approaching.

On the appointed day, the above lords, with other magnates of the realm, and the lords spiritual and temporal, put forward their appeals against the aforesaid persons named above. Standing before the king in full parliament, they declared that they wished to prosecute, maintain and declare these to the profit and advantage of the king and of the kingdom, as they are bound to do by the faith they owe as loyal liege subjects so long as they are alive. They urgently requested that right and justice should be done on such appeals in this parliament, without respect for any person but only according to the justice and truth presented before them.

Then the king, wishing to hear the articles or points on which the said lords principally appealed the five persons, caused them to be read before him. They were written in French, numbering XXXIX in all. Other articles were also put forward against Simon Burley, John Beauchamp, James Berners and John Salisbury, to the number of XVI. . . . Now, for the present, we shall, omitting the rest, talk first of the five principal people, and of how the aforesaid lords proceeded.

To the very excellent and redoubtable lord our lord the king and his council of this parliament, Thomas duke of Gloucester . . . Henry earl of Derby . . . etc. show that in the XIII November last, at Waltham cross . . . they appealed Alexander archbishop of York. . . . And they pray that the appealed should be summoned

and that right and justice be done in the matter in this present parliament. . . .

[The numerous articles of accusation follow, including:

(1) The accused have taken advantage of the king's tender age, have usurped to themselves the royal power, and have sworn the king to follow their counsels. (2) By such an oath they have deprived the king of his free condition. (3) The nobles have been hindered from approaching their sovereign except in the presence of the accused.]

Now we proceed to the articles put forward by the said lords and the community of the realm against Sir Simon Burley, Sir John Beauchamp . . . [etc.] . . . knights. Firstly, the commons of the realm impeached and accused Simon Burley . . . John Beauchamp . . . John Salisbury . . . and James Berners . . . etc. . . . [of a number of things, including: that they took advantage of the king's youth, made him dislike his proper council, made him swear to be guided by them, and so brought the king into bondage to them; the commons declare accuse and impeach Simon, etc., that they counselled, aided and abetted the others, who have been adjudged in this parliament, in all their treasons.]

There follows now the process and execution of the said parliament according to the manner of the court at Westminster, of those serving in the obedience of the lord king, written in French as follows at length hereafter.

The duke of Gloucester constable of England, the earl of Arundel and the Earl of Warwick marshal of England, appellants, came with a great following on the first day of this parliament, that is to say, on the Monday after the feast of Purification, at Westminster. There they presented themselves before the king to maintain their appeal against Alexander . . . etc. . . . for several treasons made by them against the king and the kingdom; the points of which treasons were then read before the king in full parliament.

On which day, by the command of the king and with the assent of all the parliament, the said . . . accused were solemnly summoned, and did not come. They were again summoned in full parliament on the Tuesday following. And then, on Thursday the XI day of February, the king being seated in full parliament with all the earls, barons and peers of the realm around him, and all the commons of the realm before him, in the presence of the said duke of Gloucester . . . etc. . . John Devereux steward of the king's household gave

judgement by commandment of the king, in the following form: that the said duke of Ireland, earl of Suffolk and Robert Tresilian should be drawn and hanged as traitors against the king and the kingdom, and they and their heirs should be disinherited for ever; and that the temporalities of the said archbishop should be seized into the king's hands, to his use. All the prelates of the parliament withdrew at the giving of this judgement, to avoid irregularity.

The following Monday, the king himself came to parliament and, seated on his throne in the presence of all the temporal lords, he commanded his steward to declare, in the name of the king, the king's will regarding Nicholas Brember who had arrived that day.³⁹ Then the king withdrew. The said Nicholas was led before the full parliament by the earl of Kent, constable of the Tower, and his officers; and there he was arraigned; and all the articles of treason which were imputed to him and with which he was appealed with the other traitors, by the said five lords appellant, were read before him in full parliament. On which he demanded counsel and was denied by the law of parliament.⁴⁰ Then he demanded copies of the articles and a day on which to reply and could not obtain them. Thereupon he was compelled to reply, himself, to each article, pleading guilty or not guilty; and he pleaded not guilty.

To which the duke of Gloucester and his colleagues replied in full parliament that Nicholas was a false traitor to the king and to the realm, and that they would act in this matter and maintain this in any way the parliament should award. Nicholas offered to defend himself with his body and was denied by parliament. Then, on Tuesday all the lords appellant threw down their gloves, before the king in full parliament; and all the lords, peers of the realm, with many knights and squires also threw down and wagered their gloves before the king, to the number of 305 gloves,⁴¹ that Nicholas was a false traitor to the king and the realm. And the following Wednesday the peers of all the realm decided what judgement they would give towards Nicholas. . . .

[Robert Tresilian was appealed with the others of high treasons by the duke of Gloucester, etc. A day was given him to answer in

³⁹ The French is obscure: *Dire en noun du roy quele fuist la volente du roy que Nichol Brember suisditz fuisse arrive ycell jour.*

⁴⁰ *Et fuist ouste par la ley du parlement.*

⁴¹ *Illoques gageront ensi lour gautes et getteront devant le roy a nombre de CCC gauntz et V. que le dit Nichol est faux traitour a roy et a son roiaume sanz les aprendre arere.* I do not see the significance of the last four words.

parliament; on which day he did not come, and thus for a second and a third time in full parliament; so, by his default, it was awarded that Robert Tresilian should be drawn and hanged.]

The following Thursday the king came into full parliament and commanded all the lords of parliament to proceed to judgement on Nicholas Brember. Then the king left parliament and Brember entered; and several matters of treason, of which he was appealed by the lords and impeached by all the commons of the realm, were rehearsed before him. At first he pleaded not guilty to all charges, but he was found guilty by all the peers of the realm. So he was adjudged in the same way as Tresilian etc.; and that day he was drawn and hanged. . . .

[Then follows the trial of Robert Bealknap and others.] The following Thursday the justices were sent back to the Tower; and on the same day the bishop of Chichester was impeached by the commons in full parliament on certain points of treason. The following Friday, the archbishop of Canterbury and all the prelates were in full parliament and the impeachments were rehearsed in their presence to the bishop, by the steward; and he replied to them. And the commons prayed that he should be arrested for what he had done and the prelates counter-pleaded. Then they [i.e. the prelates] begged leave to depart in order to discuss together; and they did this. Then all the justices returned into parliament and they and each one of them were judged to be drawn and hanged. . . . Then the said archbishop of Canterbury and all the prelates except the bishop of Chichester entered; and the archbishop begged all the lords and commons of parliament, for the mercy of God and as an act of charity, a respite of the execution on the bodies of the justices.

—From the narrative of the Monk of Westminster, in a continuation of Ranulph Higden's *Polychronicon*, ed. J. R. Lumby (R.S., 1886), IX, 83-155.

III. *Appeal of Alexander Archbishop of York and others according to the Rolls of Parliament*

Appeal and Process against Alexander . . .

From 3 February 1387 to 12 May 1388.

Be it remembered that on Monday 3 February . . . in parliament at Westminster, Thomas duke of Gloucester . . . Henry earl of Derby, Richard earl of Arundel . . . Thomas earl of Warwick and Thomas

earl Marshal came into the presence of the king in the White Chamber and presented their petition, as appears in a certain roll stitched and attached to this. To our . . . lord the king and his council . . . Thomas . . . [etc.] show that the above Thomas . . . appealed Alexander . . . before . . . William archbishop of Canterbury, Edmund duke of York . . . William bishop of Winchester . . . at Waltham Cross . . . on the XIII November last, of high treasons made by them against the king and his realm and offered to pursue and maintain this, and to find adequate security; and they begged the said lords to certify this to their liege lord. Which thing was certified on the same day to our lord king at Westminster in the presence of several of the appealed who were fully informed and certified of the said appeal.

And then, with the assent of the king and of his council, the . . . [appellants] . . . came to Westminster the Sunday following into the presence of the king and of his council and there they appealed the said Alexander . . . [etc.] . . . of high treason, made by them against the king and his realm . . . affirming their said appeal and offering to pursue and maintain it as aforesaid.

Which appeal the king accepted; and on this he assigned a day to the parties at his first parliament held at Westminster the day after the next Candlemas, to take and receive there full justice on the said appeal. . . .

And then, the Monday after Christmas, the aforesaid Thomas duke of Gloucester . . . [and the four other appellants] . . . appealed Alexander [and others, again] . . . in the presence of the king in the Tower of London. [Day was fixed in the next parliament "to pursue and declare their said appeal."]

[The lengthy appeal is then copied out in full. The Appellants then begged the king that the defendants should be called to answer the appeal.]

And [the appellants requested] that the said Nicholas [Brember] who was in prison for the same cause, should be led in to reply to the said appellants in the same appeal. And they said they were ready to pursue their said appeal and to prove the contents of each article of it, according to what should be awarded in the same parliament to the honour of God and the honour and profit of the king and of all his realm. . . .

Upon which it was commanded that the aforesaid archbishop [and others] appealed as above, should be summoned; and they were

solemnly summoned, there in parliament, in the presence of the king and of the lords of parliament, to come and reply to the above appellants, in the above appeal. . . . And because the said appealed, when they had been demanded in this solemn fashion, did not come to reply. . . . The said duke and earls appellant begged the king and the lords of parliament that they would record the default of those appealed and summoned as above, and further, to proceed to judgement on their default. Upon which the king and lords of parliament held deliberation until the next day, Tuesday.

At which time the justices and sergeants and others wise in the law of the realm, and also those skilled in civil law, were charged on behalf of the king to give loyal counsel to the lords of parliament, concerning the proper procedure in the aforesaid process of appeal. The justices . . . deliberated about the matter and replied to the said lords of parliament that they had carefully regarded and understood the tenor of the said appeal, and they reported that the appeal was not made nor affirmed according to the order which either the one or the other of these laws [Common or Civil] requires. Upon which the said lords of parliament deliberated and advised about it and in common agreement, with the assent of the king . . . declared: That in so high a crime as is alleged in this appeal, which touches the person of the king . . . and the state of his realm, perpetrated by persons who are peers of the realm and by others, the process will not be taken anywhere except to parliament, nor judged by any other law except the law and court of parliament, and that it pertains to the lords of parliament and to their franchise and liberty, from ancient custom of parliament, to be judges in such a case, and to judge such a case, with the assent of the king.

And that it should be done thus in this case, by award of parliament, because the realm of England was not in the past, nor, according to the intention of the king and of the lords of parliament, ever will be ruled or governed by the civil law. Moreover, their intention is not to rule or govern such a high case as this appeal, which will not be tried or terminated anywhere except in parliament, as has been said, according to the course, process or order used in any lower court or place in the realm. These courts and places are only there to execute the ancient laws and customs of the realm and the ordinances and establishments of parliament. And the lords of parliament were of opinion, with the assent of the king . . . that this appeal was well and sufficiently properly made and

affirmed, and the process upon it was good and effective according to the laws and procedure of parliament, and they will entertain it and adjudge upon it as such.

[The prelates declared that they were prevented by canon law from taking part in the proceedings. The protestation was enrolled. The prelates left parliament. The temporal lords declared and adjudged that many of the articles against the appealed were treason, and that the appealed were notoriously guilty of these and of the other articles not declared treason.]

The same Thursday, 13 February, the said . . . appellants begged the king and the lords of parliament who were there, that the archbishop [etc.] appealed as above, should be adjudged convicted of the high treasons contained in the appeal. On which the lords of parliament, being present there as judges of parliament in this case, by assent of the king, pronounced their declaration aforesaid and adjudged the archbishop . . . [etc.] . . ., appealed as above, guilty and convicted of the treasons contained in the articles declared to be treasonable above, and awarded that the duke, earl and Robert Tresilian, appealed as above, should be drawn and hanged as traitors and enemies of the king . . . and . . . the said lords of parliament will take counsel, by assent of the king, what is best to do, for the honour of God and holy church and the safety of the laws of the realm, touching the person of the archbishop, appealed as above. . . .

On which Monday, the 17 February, with the king and lords temporal in the White Chamber, in full parliament, the . . . appellants said that they were ready to pursue, prove and perform the appeal against Nicholas [Brember] in all the articles which related to Nicholas, according to the award of parliament. [Nicholas was produced and the relevant articles read before him in full parliament.] And he heard them fully and replied to the articles and said that he was not guilty on any count, and he was ready to defend this with his body as a knight should.

To this the said . . . appellants replied that he was guilty in every article of the said appeal which had respect to Nicholas, and they were ready to prove this in all manners and ways which were awarded by the said parliament. And on this the commons of parliament said that they had seen and well understood the articles of the said appeal; and they said that whatever was contained in the said appeal was true; and they said that to the extent that

within them lay they accused the said appealed. And they would wish to have done this, if it pertained to them to have done it, even if the said duke and earls had not pursued the appeal.

To which it was replied by the lords of parliament by judgement that the trial by battle did not lie in this case; but that they would examine the articles of the appeal relating to Nicholas . . . to render such judgement in this matter as would be to the honour of God and the honour and profit of the king and of his realm, and as they would reply before God, and as this belongs to the course and law of parliament. . . .

And during this examination, Robert Tresilian was taken and brought into the parliament on the following Wednesday, 19 February. It was demanded of him if he had anything to say, why execution of the judgement should not be made. Because he knew nothing which he could say it was commanded that he be sent to the Tower and from there drawn . . . and hanged.

The day after, on 20 February, Nicholas [Brember] was brought into the White Chamber and it was awarded by the lords temporal, with the assent of the king, that Nicholas should be drawn and hanged as traitor and open enemy of the king and of the realm. . . . And it is the intention of all the lords of parliament, spiritual and temporal, both the lords appellant and all others, and agreed to by them, considering the tender of the king before this time and the innocence of his royal person, that nothing contained in the appeal or in any one article, nor the judgements given upon it, shall be construed to the default or dishonour of the king's person, in any manner for the above cause, nor shall turn to his prejudice through any imagination or interpretation; but the . . . said judgements against the appealed shall have full force and virtue, whatever may be said or alleged to the contrary notwithstanding. . . .

[Then follow many items which are here omitted.]

In this parliament all the lords, both spiritual and temporal, then present, claimed as their liberty and franchise, that the great matters moved in this parliament and to be moved in parliaments in the future, touching peers of the land, should be introduced, judged and discussed by the course of parliament and not by civil law nor by the common law of the land, used in other and lower courts of the land. Which claim, liberty and franchise, the king benignly allowed them and heard in full parliament. . . .

[*From the Petitions of the Commons*]

Item that the appeals, prosecutions,⁴² accusations, process, judgements and execution, made and given in this present parliament should be approved affirmed and established, as a matter duly made, for the good and profit of the lord king and of all his realm, notwithstanding that the spiritual Lords and the proctors of the spiritual Lords absented themselves from the parliament at the time the said judgements were given, for the honesty and salvation of their estate, as is contained in a protestation made by the Lords spiritual and delivered in this parliament.

And that none of these . . . be reversed, infringed upon or annulled in any manner; and if any make prosecution⁴² to infringe annul or reverse any of the points above, which prosecution⁴² be of record, he shall be adjudged and executed as traitor and enemy of king and kingdom.

Provided always that this acceptance, approval, affirmance and establishment touching the assemblies, appeals, prosecutions,⁴² accusations, processes, judgements and executions above, hold and have their force and virtue in these cases thus arisen and occurred or only declared, and that they be not held as an example or precedent . . . in future. . . . [Nor similarly the commission of 1386] but whatever has been done concerning the above matters be firmly held, as they should be profitable to the king, the sustenance and maintenance of his crown and the salvation of his realm.

And as several points were declared treason in this parliament, other than were declared by past statutes, no justice should have power to render judgement in other cases of treason, or in any other manner than they had at the beginning of this parliament.

—From *Rot. Parl.*, III, 228-50.

⁴² *Pursuities*.

Chapter Nine

THE DEPOSITION OF RICHARD II

(a) *Some Recent Works*

- CAM, H. M. "Stubbs Seventy Years after," in *The Cambridge Historical Journal*, IX (1948), 129-48.
- CHRMES, S. B. *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936).
- CLARKE, M. V., and DENHOLM-YOUNG, N. "The Kirkstall Chronicle, 1355-1400," in *Fourteenth Century Studies* (Oxford, 1937), reprinted from the *B. J. R. L.*, XV (1931), 100-37.
- CLARKE, M. V., and GALBRAITH, V. H. "The Deposition of Richard II," in *Fourteenth Century Studies*, as above, from *B. J. R. L.*, XIV (1930), 125-81.
- EDWARDS, J. G. "The Parliamentary Committee of 1398," in *E. H. R.*, LV (July 1925), 321-33.
- FIGGIS, J. N. *The Divine Right of Kings* (2nd edition, Cambridge, 1922).
- LAPSLEY, G. "The Parliamentary Title of Henry IV," in *E. H. R.*, XLIX (July 1934), 423-49 (October 1934), 577-606.
- "Richard II's 'Last Parliament'" in *ibid.*, LII (January 1938), 53-79.
- RICHARDSON, H. G. "Richard II's Last Parliament," in *ibid.*, LII (January 1937), 39-47.
- STEEL, A. *Richard II* (Cambridge, 1941).
- WILKINSON, B. "The Deposition of Richard II and the Accession of Henry IV," in *E. H. R.*, LIV (April 1939), 215-39.
- WRIGHT, H. G. "The Protestation of Richard II in the Tower in September 1399," in *B. J. R. L.*, XXIII (April 1939), 151-66.

(b) *Introduction to the Documents*

THE deposition of Richard II in 1399 is the last political crisis dealt with in these volumes. In some sense it was the great climax to all the political problems since 1216. The issue was

at length clear-cut between absolutism and limited monarchy; and it was decided in favour of the latter, for at least another two hundred years.

Eight documents on the deposition are printed below. There are two chronicles of the now-familiar type. One (Doc. VI) is by our old friend Thomas of Walsingham, who has already been discussed. The other (Doc. VII) is part of the Chronicle of Adam of Usk. It is Lancastrian, and violently partisan, but written by a skilled lawyer, who was in the thick of these proceedings. He was in the following of Archbishop Arundel and sat on the commission set up by Henry Bolingbroke to consider the procedure to be adopted against Richard. Thus his words have a special significance.¹ There is finally (Doc. VIII) a poem by John Hardyng with additional comments by the writer. John was a layman, follower of Sir Robert Umfraville, veteran of Shrewsbury and Agincourt. He was, in the words of Professor Tout, "a liar and a forger";² so that, though he may reflect northern opinion, his testimony must be handled with great care. All the other extracts are from the *Rolls of Parliament*. They show some of the acts by which Richard alienated the nation in 1397-9, and also part of the formal process by which he was deposed.

All these documents, except the poem of John Hardyng, represent the Lancastrian version of Richard's deposition. Even the *Rolls of Parliament* contain elements of pure propaganda. This was so skilful that, helped by the modern faith in "impartial" records, it continued to deceive historians until the recent researches of Professor Galbraith and Miss Clarke.³ These researches have not only given us a clearer insight into the crisis of 1399; they have also done something to lessen the belief in the infallibility of the records. Mr. J. G. Edwards has similarly established beyond doubt that Richard himself set a precedent for falsifying the official record by tampering with the *Rolls* of the parliament at Shrewsbury in January 1398.⁴

¹ For this, see note 32, p. 296.

² *Chapters*, IV, 46, n. 2.

³ See the joint article cited above.

⁴ This is discussed below, pp. 289-90.

The "Lancastrian" version of Richard II's deposition, set forth in the *Rolls of Parliament*, was circulated to the leading centres of historical writing, and was carefully followed by the leading chroniclers. Probably only obscure and local writers escaped its influence⁵ Thus, neither the records nor the chief chronicles can be relied upon.⁶ The task of discovering the truth about the deposition of Richard becomes almost impossible; and that fact helps to explain the differences of opinion between modern historians.

Richard's resumption of power after the Merciless Parliament has already been touched on in the Introduction. After this, the first event of great constitutional importance was the presentation of a petition by Thomas Haxey in 1397 against the expenditure and extravagance of the king (Doc. II). Haxey's petition was met by a furious reaction on the part of the monarch. It was, indeed, provocative, but neither entirely unreasonable nor unprecedented. It was hardly more radical than Henry of Keighley's a century before. Yet Richard had Haxey⁷ condemned for treason, and he compelled the Commons to acknowledge humbly and openly that they had no right to meddle with matters relative to the king's person or his household "or any person of the state whom he please to have in his company." The Lords were not behindhand. On 5th February they resolved that it was treason for anyone to excite the Commons of parliament or any other person to reform anything touching the person, government or "regality" of the king.⁸

⁵ Such as that of Dieulacres in Staffordshire, used by Professor Galbraith and Miss Clarke.

⁶ Even the less important chroniclers were visibly affected by the triumph of Henry in 1399, and modified their comments accordingly. See Galbraith and Clarke, p. 109.

⁷ For a discussion of Thomas Haxey, see T. F. Tout, *Chapters*, IV. 18-19. When Professor Tout says that "a clerk could not possibly have been either a knight of the shire or a burgess," he may be correct; but there is strong evidence pointing the other way. See a reference to the problem in *Speculum*, XXIII (April 1948), 302 and in *T.R.H.S.*, XXVIII, 38.

⁸ Document I below. Tout believes that Richard resented Haxey's action particularly because Thomas was keeper of the writs and rolls of the Common Bench and thus one of his own servants.

This episode suggests several conclusions. The first is the strength that Richard had acquired in parliament since 1388; the submissiveness of Lords and Commons is remarkable. The second is the disastrous effect of the episode on parliament. By it, Richard established the sanctity and inviolability of the regality which was the basis of his restoration of royal power. He undermined the use of petitions from the Commons as an instrument of the opposition. He did a good deal to prevent parliamentary co-operation between the Commons and the Lords. He went far towards destroying the immunity which the Commons had generally enjoyed whilst acting as the spearhead of reform. Thus, without creating even a semblance of a major crisis, he proved himself the most effective anti-parliamentarian since the authors of the Statute of York.

Whether or not this was the beginning of a systematic attempt to restore the monarchy by destroying the effectiveness of parliament, we have no means of knowing.⁹ The odds are, judging by later events, that it was. Some arguments in favour of this have already been suggested in the Introduction. The argument against it seems to be based mainly on a belief in Richard's lack of mental balance which makes constancy of purpose unlikely, and in a lack, also, of purpose in the actions of his opponents which has already been discussed. The death of Anne of Bohemia on 7 June 1394 affected Richard profoundly. After this his idiosyncrasies became pronounced; but not so pronounced, perhaps, that we can be sure of a lack of mental balance on his part.¹⁰ Our best contemporary student of this problem has pronounced, on the whole, in favour of Richard's sanity.¹¹ The theory of a design and consistency in Richard's actions seems to be preferable; but before it can be fully accepted certain ambiguities in his policy towards parliament must be more fully discussed.

⁹ This was Stubbs' view, tempered by doubts as to Richard's mental balance; *C.H.*, II, 519. Cf. *ibid.*, 524.

¹⁰ It is not always remembered that other medieval kings, not accused of manic insanity, have shown extravagances probably equal to Richard's—notably John.

¹¹ V. H. Galbraith, in the "New Life of Richard II," listed in Chapter VII above.

Parliament was the key institution, and if Richard had a deep policy, it is in relation to this national assembly that it must have been most fully and consistently worked out. To Stubbs, the policy presented little problem. Richard's attitude was clearly demonstrated in the assembly of Shrewsbury, lasting from January to February 1398. In relation to finance, the king went far towards making himself independent of any parliament for a good many years to come. He got the grant of a tenth and a fifteenth and half a tenth and half a fifteenth for the next year and a half; he also got "what was far more than this, and more than had ever been granted to any English king,"¹² the subsidy on wool, woolfells and leather, for life. Richard was now "to all intents and purposes an absolute monarch." With this conclusion, most modern writers are substantially agreed.

The second aspect of Richard's policy at Shrewsbury was equally clear and unmistakable to Stubbs, but has not been regarded so by later writers. It consisted of the setting up of a famous committee of parliament, to deal with judicial and other matters after the general assembly had adjourned. The record of this appointment was falsified, possibly in 1399, so as to extend the committee's powers, and enable it to act with the authority of parliament in an indefinite variety of affairs (Doc. IV). Stubbs saw this action as part of a clear design to destroy parliament.¹³ Together with the independence accorded to Richard in finance, it would have enabled the king virtually to dispense with the summoning of parliament for the remainder of his reign. The two aspects of his policy would thus be strictly in line, part, it would seem probable, of a general design.

This view has, however, recently been questioned. The original commission of the committee of 1398, Mr. Edwards suggests,¹⁴ was not without precedent, and only conveyed a

¹² *C.H.*, II, 522.

¹³ *C.H.*, 522. "This suicidal parliament."

¹⁴ *E.H.R.*, LV, 321-3, as listed above. Mr. Edwards has shown conclusively that there can hardly have been any intention of evading future meetings of parliament when the committee was first set up. The argument above that there may have been such an intention applies only to the period after the falsification of the record.

limited authority.¹⁵ Even the extension, to enable the committee to deal with "all other matters and business moved in the presence of the king,"¹⁶ was not intended to enable Richard to dispense with parliament. "The king's main concern," Mr. Edwards argues, "was probably not so much to supersede parliament as to prevent any possibility of a revival of the hated commission of 1386." He desired to have as his council a body of ministers who were there to conduct, not a number of barons who were there to control, his government. A curialist council was more important in Richard's plans during these years than the committee of parliament. The former was a permanent necessity; the latter seems to have been little more than an instrument of vengeance and therefore quite possibly a temporary expedient.¹⁷

Stubbs, whilst laying no stress on the charge of a falsification of the records,¹⁸ found the committee of 1398 part of Richard's design to destroy parliament; Mr. Edwards, whilst demonstrating and stressing the falsification, did not find that the committee was probably part of such a design. Yet the fact of falsification would seem at first sight to strengthen, not weaken, the argument of Bishop Stubbs. It is true that the use Richard actually made of the committee, at any time, was restricted; but perhaps this proves nothing regarding his ultimate intentions.¹⁹ The exact scope of these must always remain doubtful because Richard's deposition prevented them, in any case, from being carried out. It has been argued that by his actions and declarations Richard emphasized rather than

¹⁵ It was to consider certain petitions not yet answered in parliament and (with a slightly changed personnel) to discuss and settle matters between Hereford and Norfolk.

¹⁶ Richard first used the committee, thus granted new powers, in order to revoke the letters patent which he had granted in October 1398, empowering Norfolk and Hereford to appoint attorneys to receive any inheritance which might fall to them in their banishment.

¹⁷ This seems to me the most important discussion. T. F. Tout's suggestion (*Chapters*, IV, 41) that the committee may have been a substitute for the "great councils" of the earlier part of the reign seems to have no direct evidence to support it. A. Steel follows Mr. Edwards (*Richard II*, 251).

¹⁸ *C.H.*, 522. Though he knew all about it, as Mr. Edwards makes clear.

¹⁹ Richard did not take a quorum of the committee to Ireland; but this hardly throws any hard light on Richard's long-term designs regarding the committee.

depreciated the importance of parliament in the constitution. Nevertheless, the very stress that he laid on the authority of parliament which his committee wielded might indicate how definitely he considered the committee to have taken parliament's place.

It hardly looks as if general arguments will enable us to decide the issue. There are, however, one or two arguments of a more limited kind. In the first place, there is the combined testimony of three important chronicles, the *Annales Ricardi*,²⁰ the *Eulogium Historiarum*²¹ and the *Chronicon* of Adam of Usk.²² The second of these says that Richard "made parliament refer this to the arbitration of (*hoc compromittere*) 12 persons who, by continuing parliament where and when the king wished, might with him ordain statutes acceptable to the king." The other chronicles, with some variations, agree. It is clear that the writers regarded the king's intentions, in setting up the committee, with the gravest suspicion. They do not say that the king intended to dispense with parliament; but they thought that the committee had the power of ordaining statutes with the authority of parliament; and it is likely that, if Richard could do this, his need to summon parliament would largely disappear. All these writers were partisan. They may have been persuaded by the official indictment of Richard. Still, their testimony cannot be entirely set aside.

Secondly, there is a passage in the king's will, dated 16 April 1399, in which Richard referred to "all the ordinances and judgements which shall happen to be made in future by

²⁰ *Annales Ricardi Secundi et Henrici Quarti in Chronica Monasterii S. Albini Johannis Trokelowe . . . necnon Quorundam Anonymorum Chronica et Annales . . . Ricardi secundi . . .*, ed. H. T. Riley (R.S., 1866), 222. This follows the wording of the Indictment against Richard of 1389.

²¹ Ed. F. S. Haydon (R.S., 1863), III, 377-8.

²² *Chronicon Adæ de Usk*, ed. E. M. Thompson (London, 1876), 24, translated on p. 132: "The king got the whole power of the government to be given over to him and to six others to be named by him for the term of his life, where and when he pleased." Cf. Gower, "Vox Clamantis," p. 410, cited Stubbs, *C.H.*, II, 522, n.2: "Nota qualiter rex subtili fraude concessum sibi obtinuit quod ubicumque sedere vellet cum certis personis sibi assignatis perprius inceptum continuare posset parlamentum"—"Note how the king by subtle fraud obtained the concession that wherever he wished to sit with certain persons who had been assigned to him, he could continue the parliament which had been earlier begun."

authority of that parliament.²³ This may, indeed, only imply that Richard intended to continue using the committee as an instrument of vengeance. But there seems to be nothing in the words themselves to justify such a limited interpretation. There was indeed a limitation. The reference is only to ordinances and judgements, not to statutes. But this still seems to leave an important part of the authority of parliament in the hands of the committee of 1398.²⁴

Thirdly, there is a clue to the essence of the king's plan, Mr. Edwards suggests, to be found in the speech of the Chancellor at the opening of the Shrewsbury parliament.²⁵ The Lords and Commons, the Chancellor said, should enjoy their liberties and franchises as they had reasonably had them in the past, so that there should not be several rulers in the realm, but one. Richard did not deny his subjects their liberties, but they must be "reasonable," that is, in accordance with custom. The reference to only one ruler, Mr. Edwards suggests, was more likely a reference to the commission of 1386 than to any design of Richard in 1398. Unfortunately, we have no direct evidence on the point. But, considering some of the certain accomplishments of the Shrewsbury parliament, it looks as if Richard might well have been paving the way for these by his opening address. His speech no doubt looked both backwards and forwards. But it seems safer to associate it with the events of this parliament rather than with those which had occurred

²³ That is, presumably, by authority of the parliament of 1398. One accusation against Richard at his deposition (Doc. V., cap. 25) was that by colour of the grant in the Shrewsbury parliament, the committee "proceeded to other matters generally touching that parliament . . . in derogation of the 'state' [*status*] of parliament." Unfortunately, this language is not very explicit. Nevertheless, it seems to suggest that the committee was intended to continue the general authority of the parliament of 1398. For use of the term "by authority and assent of parliament," see S. B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936), 138. The parliamentary committee was, according to the *Eulogium Historiarum* (III, 378; cited by Clarke and Galbraith, *B.J.R.L.*, XIV, as above, 114), associated with the compulsion of Lords and Commons to set their seals on blank charters.

²⁴ This seems to be borne out also by the wording of the indictment in Doc. V below, cap. 48.

²⁵ The speech was very similar to that of September 1397, translated below (Doc. I); Edwards, as above, p. 332; Rot. Parl., III, 356-7.

eleven years before. Perhaps it would be better to make no deductions from the chancellor's address, relative to the parliamentary committee of 1398. But even apart from this, though after Mr. Edwards' cogent arguments the purpose of the committee must be regarded as uncertain, it does not look as if we are as yet in a position to depart entirely from the general remarks on its importance made by Bishop Stubbs.²⁶

Richard's position after 1398 must therefore, it seems probable, still be summed up in the words of earlier writers. Richard held his parliament in his own hand. As Tout says, he had consummated a royalist revolution. He had destroyed his enemies not only in the bark but in the roots. He had made himself an autocrat.²⁷ It was this, it may be suggested, rather than any "petty tyrannies,"²⁸ which was the real cause of Richard's deposition in 1399.

Even Richard's sequestration of the Lancastrian estates and his journey to Ireland in 1399 seem to have provided only the occasion, not the cause, of his deposition. The one gave the occasion, the other the opportunity, for a rising that was, in any case, probably inevitable. Before venturing on further generalizations on this topic, it may be as well to turn to the events of the deposition themselves.

The most obvious problems relative to Richard's deposition are: firstly, how far was it supported by the nation; secondly, how far it was the consequence of a movement against absolutism; thirdly, how far it was a "parliamentary" deposition, the beginning (together with the election of Henry IV) of Lancastrian parliamentarianism.

With regard to the first problem, it now seems to be generally agreed that nearly the whole nation flocked to Henry of Bolingbroke's standard after he landed at Ravenspur early in July

²⁶ *C.H.*, II, 523-4.

²⁷ *Chapters*, IV, 31, 32. In these conclusions, Professor Tout is supported by Professor Galbraith; *A New Life of Richard II*, 235. Richard's policy, Professor Galbraith concludes, was a "calculated attempt to free the royal prerogative from all restraints."

²⁸ Cf. my *Studies*, 247-72. For the "petty tyrannies," see Clarke and Galbraith, *B.J.R.L.*, XIV, 111-18.

1399. The basis of Henry's appeal was his proclamation that he had come only to gain his ancestral estates. It was on this basis, in all probability, that he got the support of the Percies and the Northern magnates. At the beginning, the revolt of 1399 was not a movement to depose Richard. It did not even take as its watchword the rejection of Richard's tyranny. Yet perhaps we may venture to assume that it was the hope of ending Richard's tyranny which gave the movement a general support. Both the Lancastrians and the Northern magnates had a very old tradition of opposition to absolutism. Opposition to absolutism seems to be the keynote of the indictment by virtue of which Richard was eventually deposed (Doc. V). This indictment has, indeed, been regarded as consisting of mere *pièces justificatives*.²⁹ But it was proclaimed to all the "estates and people" who took part in the deposition, and it was addressed to listeners who knew Richard well. It had, therefore, to be close enough to the truth to be convincing, and it had to present a reasonable case. Perhaps we can assume that it would not have stressed Richard's bid for absolutism quite so much as it did, unless this was something which the nation had taken very much to heart. X

Compared with the earlier indictment against Edward II, that of 1399 was detailed, copious and circumstantial. Its main purpose seems to have been to establish not, as in the case of Edward, that the king was "insufficient"; but that he was dictatorial and destructive of liberty and law. Richard, it said, had broken his coronation promise, set aside the laws, perverted the use of parliament and set up a dictatorship. He had treacherously and deceitfully circumvented the efforts at reform made in 1386 and 1388 and had terrorized the judges in 1387. Again and again it was emphasized that Richard could not be trusted. His assurances were worthless. He had cruelly deceived Gloucester, Arundel, Warwick and the Archbishop of Canterbury. He had despised and trampled on laws and

²⁹ A. Steel, *Richard II*, 283. With regard to the deposition, Mr. Steel follows Mr. Lapsley, "as far as I can understand his arguments"; *Richard II*, 271, n. 1. Perhaps this does less than justice to Mr. Lapsley's scholarly exposition.

statutes and used the committee of 1398 to usurp the general functions of parliament. He had tampered with sheriffs and knights of the shire, made forced loans and exploited charters of pardon. He had even thwarted his own council so that it no longer served the purpose of giving him proper advice. He was so "variable and deceitful" that nobody in the whole world could trust him at all.

When his opponents charged that he "often said and affirmed that the life of every one of his lieges, together with the lands, tenements, goods and chattels of such men, was subject to his own pleasure" (Doc. V, clause 43), or that he "expressly said, with an austere and determined countenance, that his laws were in his own breast, and that he alone could establish and change the laws of his realm" (Doc. V, clause 33), they were building up a picture (true or false) of a tyrant whom it was the duty of the community, according to the medieval traditions of tyrannicide, to destroy.

Most of the items seem to be close to the truth where they have been tested. They are interesting as showing not only the importance of the question of absolutism in the deposition but also, by omission, the strength and plausibility of the royalist case. Richard's claim to his "regality" was not dealt with. There was no denunciation of his claims to be "as free as any of his ancestors before him" (Doc. V, clause 34); but only that his commands, as a result of this claim, frequently violated statutes which had never been repealed. The most probable reason for these omissions seems to be that Richard's theory of the monarchy was not easy to attack. To denounce it in general terms was only to challenge a debate on which there was much to be said on both sides. Accordingly, the argument adopted was, not that Richard's theory of royalty was wrong in itself, but that the king had carried it beyond the bounds of reason. He had destroyed his case by destroying faith in himself, not in the monarchy.

Thus the indictment of Richard II may be a mere partisan declaration, but it is nevertheless a great historic document. It is a landmark in the opposition to absolutism. Coming at

the end of our period, it is not altogether unworthy to rank with Magna Carta at the beginning. At bottom the two documents breathe the same determination to defend the liberty of the subject and the supremacy of the law. In spite of all its defects, it is a notable expression of the English defence of political freedom. It seems to go far to establish the fact that it was for his attack on this freedom that, in the final analysis, Richard II was deposed.

The second problem, that of the procedure of Richard's deposition and of Henry's succession, is baffling and important. Stubbs believed that these events "made the validity of a parliamentary title indispensable to royalty." They thus proved to be the beginning of Lancastrian constitutionalism and a premature experiment in parliamentary monarchy. Mr. Lapsley, building on the fruitful researches of Miss Clarke and Professor Galbraith, seems to have established beyond question that there was no "parliamentary" deposition of Richard. Thus Stubbs' theory, in this form at any rate, can no longer be sustained. On the other hand, it cannot entirely be dismissed. If parliament did not depose Richard, nevertheless, it is generally agreed, the "estates" of parliament, possibly together with the *populus*, certainly did. The record of the proceedings was even worded so as to give the impression that they were carried out by the consent and authorisation of parliament itself.

The reasons for this, and its significance, are still very debatable. We may perhaps rule out the theory that there was a serious question of a "parliamentary" title for Henry which was rejected because of its constitutional implications. There is, we may venture to conclude, no convincing evidence to support such a theory.³⁰ Such a title was impossible, it seems likely, not because any particular group would have objected to it, but because of the still dominant concept of the nature of parliament itself. "The idea of a parliamentary deposition involves a conception of Crown and parliament as two distinct entities

³⁰ The arguments in favour of the theory will be found in G. Lapsley's "Parliamentary Title of Henry IV"; those against, in my "Deposition of Richard II and Accession of Henry IV," both of which articles are cited above.

which is contrary to all that we know of their constitutional relations in the fourteenth century. . . . The king was at least as much an integral part of parliament as the Commons or the Lords.”³¹

The alternative recommended by a special committee which Henry set up to advise him was deposition by authority of the clergy and people summoned for this purpose.³² It has, indeed, been suggested that the particular advice tendered by this committee was not what Henry hoped for, and that he brusquely rejected it;³³ but this speculation does not seem to have much positive evidence to support it. There does not appear to be any convincing reason why Henry should have rejected the advice of the committee. Adam of Usk, who was on it, does not suggest that he did. The evidence of subsequent events seems to show that the suggestions made by the committee were substantially carried out. Hence, we may perhaps venture to discuss the suggestions on the assumption that they were, in the main, acceptable to the king.

The main suggestion seems to have been that, although Richard was willing to abdicate, he should nevertheless be deposed. One reason for this may have been the existence of the High Court of Parliament, which made a judgement even more necessary against Richard than it had been against Edward II. Some of Richard's opponents had themselves made a great contribution to the evolution of this court. It was they who had provided both its practice and its theory. Now, con-

³¹ B. Wilkinson, *E.H.R.*, LIV, 220.

³² It reported that there was cause enough to depose Richard, and that, though he was ready to abdicate, yet he should be deposed “by the authority of the clergy and people,” who had been summoned for this purpose (Doc. VII). The idea was probably that, though parliament itself could not be used to depose Richard, the authority of the Lords and Commons who had been summoned to parliament was available. The committee has been regarded as in effect recommending deposition by parliament; but I have ventured, elsewhere, to differ from this conclusion. “Remembering that we are dealing here with a lawyer and an actual member of the commission, surely the whole point of this presumably accurate and technically worded report is that it does *not* suggest deposition by authority of parliament, but only by that of the clergy and people—exactly as in the precedent of 1327”; *E.H.R.*, LIV, 231.

³³ A. Steel, *Richard II*, 271.

fronted with the trial and punishment of the monarch himself, they could hardly turn their backs on their own philosophy and ignore the supreme tribunal whose competence they had emphatically proclaimed. Unless the High Court of Parliament was to be proved to be entirely dependent on the ruler by its failure to act on this occasion, there would have to be some pretence, however cautiously worded, that it gave judgement on Richard. On the other hand, the magnates were confronted with the ambiguities and omissions in their own doctrine. The High Court of Parliament was revealed at this juncture as being something other than what they had proclaimed it. It was discovered to be, as Richard had all along probably contended, much more dependent on the king than the Lords and Commons had conceded. The unsolved enigma of its relations to King, Lords and Commons was painfully underlined. This, it is arguable, is one aspect of the problem which helps to explain the appointment of this special committee and the nature of its report. The deposition of Richard II could not be parliamentary; but it was to be as near deposition by the High Court of Parliament as could reasonably be devised. Thus Stubbs was wrong, but perhaps not far wrong, in the significance he attached to these events.

After this long discussion, the details of the deposition need not, perhaps, detain us.³⁴ The "trial" of Richard took place before the "estates" and *populus*. The exact nature of this assembly cannot be discussed in this brief introduction. It looks as if it was composed of the Lords and Commons of parliament reinforced by others, especially Londoners. Such judgement as there was appears to have been given, as in 1327, by the Lords. It was, however, reported in such ambiguous language that it might be accepted as a deposition by the High Court of Parliament. The impression was further strengthened by the appointment of a "parliamentary" committee, like that of 1398.³⁵ This was given authority to depose Richard "in lieu of, by name of and by authority of all."³⁶ The committee was

³⁴ They have been very exhaustively discussed in the articles above.

³⁵ Doc. V, below.

³⁶ *Ibid.*

referred to twice as a tribunal. It talked as if matters had been pleaded before it,³⁷ and as if it had made the judgement. Thus were fulfilled the recommendations of the committee of 1399.³⁸

The deposition was, as is well known, a landmark in English history. It was one more step in the transference of the centre of political gravity from ruler to people to which the deposition of 1327 had already made a contribution. It does not matter much whether Richard was deposed by parliament as Stubbs thought, or by the parliamentary "estates," the result was largely the same. It made his successor owe his position to a decisive act by the "estates" and "people," rejecting a king who was unworthy to rule. The deposition of Edward II might have been later ignored as a political accident. In spite of efforts to the contrary, it had little constitutional form or semblance of legal right.³⁹ That of Richard, as the second, probably the third example, fortified by the newly developed possibilities of the High Court of Parliament, made deposition look like a process based not only on political expediency but also on justice and law. It underlined all the significance of 1326. Richard's deposition was the final proof that the old ascendancy of the king had been permanently weakened. He could not be dispensed with, as the summit of the political structure; but he ruled by the grace of the community as well as the grace of God; and the community had discovered an instrument and a method by which its share in the government of England could be assured. In fact, sovereignty in England had, in fact if not in theory, now become a composite sovereignty, shared by both the ruler and the subject. Both elements had to be reconciled with each other in a new organic unity, if the cohesion of English political life was to be preserved. This

³⁷ "All matters pleaded before the aforesaid estates and ourselves."

³⁸ This attempt to make the Commons judges along with the Lords, and the use of the confusing terms "estates" and "people," probably brought forth the protest of the Commons in the first parliament of Henry IV, quoted in my "Deposition of Richard II," 238.

³⁹ That is, as a deposition. In strict theory, Edward abdicated, a precedent the committee of 1399 in part rejected.

Henry and his advisers may dimly, very dimly, have perceived; and this perception may have had something to do with the important declaration of policy which will be quoted a little later on.

The final problem, the process of Henry IV's accession, may be much more briefly treated. If Henry was anxious to use the traditions and prestige of parliament to support the deposition of Richard, there seems to be no reason why he should not use them to support his own succession. Some historians have, in fact, argued that Henry wished to avoid, others that he wished to obtain, this "parliamentary" sanction. On the whole the latter seems more likely to be correct. There seems to be little doubt that, as regards the short-term consequences, at least, "parliamentary" election could do nothing but strengthen Henry's position. Nor can we assume that Henry was very interested, at that moment, in anything but the short-term consequences. It seems likely that he was pre-occupied rather with the immediate problem of getting Richard deposed and himself safely elected, than with the distant constitutional repercussions of these acts.⁴⁰

A recent writer has suggested⁴¹ that Henry was determined to base his claim, in any case, firstly on descent and secondly on conquest. If this implies that Henry believed the acclamation of the people to be unimportant, it is perhaps open to question. The importance of the claim of descent has possibly been slightly exaggerated. Henry only claimed that he was "disendit be right lyne of the Blode comyng fro the gude lorde

⁴⁰ It was suggested, in my article on the "Deposition of Richard II," cited above, that the Percies probably objected to Henry's grasping the Crown, after swearing at Doncaster that he would not. Mr. Steel thought (*Richard II*, 276) that the guess that the Percies were known to be discontented when Henry claimed the throne, and were certain to oppose the claim, if not to assert their own, "is perhaps too fantastic to be taken seriously." His reasons for such an assertion are not given. On the other hand, Mr. Steel concludes elsewhere, somewhat inconsistently (p. 272), that "it is not necessary . . . to disbelieve the assertion made by the Percies in later years when they were in revolt against him that they personally had indeed helped Henry to recover his Lancastrian inheritance but had never intended that he should become king at all." Perhaps the idea, wherever it originated (it is not mine), that the Percies might have asserted their own claim to the throne is indeed fantastic.

⁴¹ A. Steel, *Richard II*, 271.

Kyng Henry." He did not claim the throne by primogeniture. His words are reminiscent of the threat of the barons in 1386 to elect in place of Richard "some near kinsman of the royal line."⁴² Henry claimed to be this. He appealed to the long established tradition that the successor to any monarch should be of the same royal stock, but not of strict necessity the eldest son. This idea had been very important in the succession of almost every ruler from William I to John.⁴³ It entailed the idea of "election" from the eligible candidates of the royal blood.

Henry's second and possibly more important idea of a claim by right of conquest would have gone far to deny any real importance to election; though we should not forget that "election" had been very important, at least in the shape of acclamation, after the only Conquest in English history. It was objected to by Thirning⁴⁵ because it would have been regarded by the people as substituting force for law as the basis of the state and was, in fact, watered down after this objection. It was expressed, "and thorghe yat ryght yat God of his grace hath sent me, with helpe of my Kyn and of my Frenedes to recover it: the whiche Rewme was in poynt to be undone for defaut of governance and undoyng of the gode lawes." This language seems to imply that Henry has been victorious in the trial by combat. He has thus a divine sanction for his "recovery" of his realm. He did not merely invite the "estates and people" to elect him ruler; he was a candidate already

⁴² Doc. I, Chapter VII, above. To be elected with the consent of the "people of the realm."

⁴³ See *A History of the English Coronation*, by P. E. Schramm, translated by L. G. W. Legg (Oxford, 1937).

⁴⁴ It is quite possible that the wording of Henry's claim resulted partly from the finding of the committee set up to consider the problem of succession. This committee apparently found it impossible to question the fact that Edward, and not Edmund Crouchback, was the eldest son of Henry III. Thus Henry, though he may have fostered the Crouchback legend, could not use it to claim the throne as descended from the eldest son of Henry III. Even his own committee of advisers had not recommended this. The most judicious discussion of the question is still that of Stubbs, in *C.H.*, III, 11-12, with added comments by Mr. Lapsley in the article cited above. But even Stubbs may have given too much weight to Hardyng's story of Henry's determination to claim priority through Edmund Crouchback.

⁴⁵ *Annales Ricardi*, 282.

designated by God. Still, even though designated by God, Henry came before the "nation" for its acceptance. He did not ask for, he "challenged" the realm, as being (he suggested) rightfully his; but his very "challenge" implied that the concurrence of the nation was something which he desired.

"Election" was probably, therefore, the third, indispensable basis on which Henry claimed to succeed to the throne. He had to be accepted by the nation. His "challenge" did, indeed, keep the idea of election in the background. He did not wish to be a king dependent on the suffrage of anybody. Nevertheless, according to Adam of Usk, (Doc. VII) he succeeded "by consent of the whole parliament." We know that the lords and "estates" were asked individually if they agreed to his claim. And, at his coronation (as in Abbot Lytlington's coronation order), the Archbishop four times demanded the approval of the people. What took place, Professor Shramm has concluded, was an election though this was not an innovation of 1399. In spite of his "challenge," it is doubtful if Henry could avoid the implication that he was king by grace, not only of God but also of parliament, or at least of the parliamentary "estates."

We are at length in a position to make a few general observations on these important events. In the first place, it seems clear that the records of this last period are the most difficult and exacting of the fourteenth century. Their revaluation by modern writers is too recent for historians to have arrived at much agreement about them or about the history they record. Much of what is said above is entirely tentative. In the second place, however, some main points seem to be fairly certain. The deposition of Richard was a reaction against his attempted despotism even more than a product of the ambition of the future Henry IV. Its consequences, as such, could not fail to be profound. It expressed the nation's rejection of absolute monarchy, and, by consequence, the continuation of the limited monarchy which Richard had opposed. This was, in effect, a new kind of limited monarchy, so much so that the revolution of 1399 could justly be regarded by Stubbs as beginning a new period in English History. Though Henry did not advocate the

ideas of parliamentary sovereignty which had been asserted in 1388, there is little doubt that his triumph did something to revive them. He himself had once advocated them. Richard had destroyed them. Moreover, those ideas were bound to be encouraged by the circumstances of Richard's deposition and Henry's succession. There was no way to avoid giving a central position in both processes to Lords and Commons summoned to parliament. Far from avoiding this, Henry needed it for his own safety. His own political traditions were inextricably bound up with the notion of the ascendancy of parliament, both as a political assembly and as the High Court of the Realm. His bid for the throne made it necessary for him to look for a general support for his actions which only the estates of parliament could afford.

His deposition of Richard and his own election to the throne should not be regarded as isolated episodes. They were the culmination of a century of political evolution and of constitutional growth. Stubbs was probably right in connecting Henry's accession to the throne with the traditions of Thomas of Lancaster: "The name of the Martyr of Pomfret had been revived, and made a watchword with the faithful commons: his canonisation had been again broached, and his shrine had streamed forth with fresh blood. The end was now accomplished; and his heir entered on the inheritance of his murderer."⁴⁶ The strength and tenacity of the Lancastrian traditions, even their very nature, are still in great need of investigation; but it seems likely that they were greater than Stubbs' successors have supposed. They may even have included some form of constitutional doctrine, which we may trace back, very tentatively, to the accession of Edward II.⁴⁷ It is doubtful if Henry Bolingbroke, who claimed the throne through Blanche of Lancaster, and not through John of Gaunt,⁴⁸ and who had been an Appellant, can have ignored them in 1399.

⁴⁶ *C.H.*, II, 533.

⁴⁷ But Cf. H. M. Cam, "Stubbs Seventy Years after," listed above.

⁴⁸ Though of course it has to be remembered that when he made the claim, Richard and the descendants of Lionel of Clarence were still alive.

Henry IV, by virtue of his past heritage and present position as Richard's successor, combined both the baronial and monarchical outlook. His succession had to be a great reconciliation of opposing interests. He did, in effect, bring together the opposing elements of Richard II's reign in a new structure of politics, the spirit of which, comparable to that which began Edward III's reign, may perhaps be given in his own memorable words: "It is the king's wish to be advised and governed by the honourable, wise and discreet people of his realm, and to do what is best for the government of himself and of his realm by their common counsel and assent. He does not desire to be governed by his own will, nor by his arbitrary purpose or singular opinion, but by common advice counsel and assent."⁴⁹ Nobody who made such a public declaration as this can have greatly feared a "parliamentary" title to the throne. On the other hand, all the traditions of English monarchy which Henry inherited made it impossible for him to renounce the "regality" which Richard had defended and which even his enemies had not ventured to deny. The two things had somehow to be reconciled, and were in fact reconciled, in the sovereignty of king-in-parliament which was, it may be asserted without much exaggeration, the true basis of Henry IV's rule.

Thus the complicated details of Richard's deposition and Henry's accession had an immense significance which justifies both the above long discussion and all the attention which historians have recently lavished upon them. They represent a great climax in English history and the beginning of a new period. With Henry IV's declaration, the long age of the personal monarch may fairly be said to have ended, and the "constitutional" monarchy of the modern period may be said to have begun. The precise lines on which this great transition was effected are a problem of first magnitude in English constitutional history. However they are ultimately resolved, one thing seems to be fairly certain. They will be found to

⁴⁹ *Rot. Parl.*, III, 415. I have made some comments on this declaration in "The 'Political Revolution' of the Thirteenth and Fourteenth Centuries," *Speculum*, XXIV, 505-6.

reflect and in some sense sum up all the complicated tendencies of the fourteenth century. They will represent the unbroken evolution of the great medieval political tradition. They will show this taking a form which brings us to the threshold of the modern age. It will probably be found, indeed, that the crisis of 1399, perhaps more than any other single episode between Magna Carta and the Long Parliament, paved the way for modern constitutional monarchy.

(c) *Documents*

- I. Speech of the Bishop of Exeter, Chancellor of England, at the opening of the parliament of 1397.
- II. The case of Thomas Haxey in the parliament of 1397.
- III. Grant of Richard II of a subsidy for life in the parliament at Shrewsbury, January 1398.
- IV. The appointment of the standing committee of parliament, January 1398, and the additions to the record made by Richard in 1399.
- V. Deposition of Richard II according to the *Rolls of Parliament*.
- VI. Deposition of Richard II according to Thomas of Walsingham.
- VII. Deposition of Richard II according to Adam of Usk.
- VIII. John Hardyng's account of the attitude of the Percies towards the accession of Henry IV.

I. *Speech of the Bishop of Exeter, Chancellor, at the opening of the Parliament of 1397*

The Bishop of Exeter, Chancellor of England, by command of the king showed and declared the cause of the summons of parliament. He described how the king had summoned his parliament for the honour and reverence of God and of holy church, and for the salvation and amendment of his realm. Accordingly, he took for his theme the word of Esekiah the prophet; there shall be one king for all. Several authorities on Holy Scriptures allege regarding this, that there shall be one king and one governor, and that no realm can be governed in any other way. For the good government of any king, three things are required. Firstly, that the king shall be

powerful [enough] to govern. Secondly, that the laws by which he ought to govern should be kept and executed justly. Thirdly, that the subjects of the realm should be duly obedient to the king and to his laws.

With regard to the first requirement, in order that kings should be sufficiently powerful to govern their subjects, they have by right several privileges given to them, such as regalities, prerogatives and several other rights annexed to the Crown. These, they are pledged, at their coronation, to guard and sustain. They cannot alienate or translate them to other use; so that even if such alienation should be affirmed by oath, the law will repeal it and release [the king] from his oath. Wherefore, the king has caused his estates of parliament to be assembled on this occasion, to be informed if any rights of the Crown should be subtracted or diminished; so that by their good advice and discretion such remedy can be provided, that the king can be made as his ancestors were before him, in his liberty and power; and as he should be of right, notwithstanding any ordinance to the contrary. Thus [there will be] one king for all, and he will govern all.

With regard to the second requirement, it appertains to the good government of every country that the laws should be justly kept and executed. Wherefore it is written, in the authorities concerning the laws,⁵⁰ that the chief government of any king ought to begin with the constitution of the laws by which he ought to govern his people;⁵¹ and he ought to ordain such laws as will cherish good and punish evil. Thus the father teaches his son how he ought to refrain from evils and vice, by the use of threats. So the king, like a good father of all the people, will make laws by which the people can be taught how they should behave themselves towards him and towards their neighbours. In which laws he should include penalties, by threat of which they ought to abstain from evil deeds, so that they be not punished by authority of the law more grievously than the king wishes, for the king cannot remit the penalties of the law without hurt to the one who has been grieved. To this end, the king has created his officers, judges and ministers, throughout his realm, who ought to guard, execute and maintain the rights of his realm. . . .

⁵⁰ *En auctoritees des Loies.*

⁵¹ *Le Principal gouvernement de chescun roy doit comencer de constitution des loies, par queux il doit gouverner.*

With regard to the third requirement, it pertains to the good government of every realm that the subjects should be obedient to the king and his laws. The king should everywhere make just and honest laws, by which great and small should equally be ruled. Otherwise, no man can claim possession of his own goods. But good laws give possession to every person. Wherefore, the king wishes to know if any of his lieges are oppressed or disturbed, and cannot sue and get remedy at common law. And on this matter he wishes counsel from all the estates of parliament, so that he can give good and due remedy in this present parliament.

And our lord the king, showing his gracious *seignurie*, as always, to the reverence of God and the quiet of his people, wishes that the holy church and the Lords spiritual and temporal, as well as the cities and boroughs and other communities, shall have and enjoy their liberties and franchises, as they formerly possessed and enjoyed them reasonably in the time of his noble ancestors, kings of England. . . .

—From *Rot. Parl.*, III, 347.

II. *The Case of Thomas Haxey, in the Parliament of 1397*

(a) . . . With regard to the fourth article, concerning the expense of the king's household and the residence of bishops and ladies in his company, the king was greatly aggrieved and offended at the fact that the Commons, his lieges, should take unto themselves or presume [to make] any ordinance or governance relating to the king's person, or to his household, or to any person of "estate" whom he pleased to have in his company. And it seemed to the king that the Commons herein committed a great offence against his regality and his royal majesty and the liberty both of himself and of his honourable progenitors. These he had held and by the aid of God would maintain and support. Wherefore the king commanded the said Lords spiritual and temporal on the following Saturday morning fully to show and declare the king's will in this matter to the said Commons. Furthermore, the king, hearing how the said Commons had been moved and instructed⁵² by a bill presented before them to express and demonstrate the said last article, commanded the Duke of Guienne and Lancaster to charge Sir John Bussy, speaker of the Commons, by the fealty [owed to the

⁵² *Enformez.*

king], to report to him the name of the man who had presented the said bill before the Commons.

On Saturday, the morrow of Candlemas, the Lords spiritual and temporal [assembled], together with the Commons, to whom they explained the will and command of the king; and the said Commons delivered the said bill to the Lords, with the name of the man who had presented it to them, that is to say, Sir Thomas Haxey. Which bill was afterwards at the king's command delivered by the clerk of parliament to the clerk of the crown. Then, by the king's order, the Commons came before the king in parliament; and there, with all the humility and obedience of which they were capable, they expressed deep grief, as appeared from their demeanour, that the king had formed such an opinion of them. And they humbly besought the king to hear and accept their apology: that it had never been their intention or will to express, present, or do anything which would offend or displease the king's royal majesty, or would contravene his royal estate and liberty, either in this matter concerning his own person and the government of his household, concerning the lords and ladies in his company, or concerning any other matter touching [the king] himself; for they well knew and understood that such matters did not pertain to them at all, but solely to the king himself and to his ordinance. Thus their intention was and is, by the great affection which they bear the king as lieges, that the Lords might petition the king to consider his honourable estate, and that on this he might do that which pleased him. If the king thought otherwise, this was not their intention, which weighs heavily upon them. For this, the Commons humbly submit to his grace and will, begging his royal majesty graciously to excuse them. They also declare that they are always ready, according to their power, to preserve his royal estate and liberty, and to proffer their persons and goods for the honour and salvation of his royal majesty, as loyal lieges are bound to do.

—From *Rot. Parl.*, III, 339.

(b) . . . Upon which, having seen and understood the aforesaid bills, and the material contained in them, it was declared and adjudged, on 5 February of that year [1397] in that parliament, by the Lords of that parliament, and with our assent [as follows].

If any one, of whatever estate or condition, shall move or excite the Commons of Parliament, or any other person, to make remedy or

reformation of any matter which touches our person or our government or our regality, he might be, and should be,⁵³ held as a traitor.

Wherefore . . . before us, all our temporal Lords and the Commons, . . . by the advice of all the Lords aforesaid and with our assent, he [Thomas] was adjudged . . . a traitor on Feb. 7.

—From *Rot Parl.*, III, 408.⁵⁴

III. *Grant of a Subsidy for Life to Richard II in the Parliament of 1398*

On the same day, the Commons of the realm, with the assent of the Lords spiritual and temporal, granted to the king the subsidy of wools, leather and woollfells, for the term of his life, and the fifteenth and tenth, and half a fifteenth and half a tenth. . . . They protested that this grant should not be considered either as a precedent or as an example in the time of succeeding kings.

—From *Rot. Parl.*, III, 368. Translated by Adams and Stephens. *Select Documents*, 160, 161.

IV. *Appointment of the Parliamentary Committee of 1398, with the amendments of 1399*

On the same Thursday, the Commons petitioned the king that, since they had before them several petitions, those on behalf of particular individuals and also others, which have been neither read nor answered, *and also [since] a number of other matters and business have been moved in the king's presence which cannot well be terminated at present*, on account of the brevity of time; that it will please the king to commit full power to certain lords and others who will be pleasing to him, to examine, answer and terminate the said petitions and the *matters and business above said and all that arises from them.*⁵⁵ *To which prayer the king agreed. And on this, by authority and assent of parlia-*

⁵³ *Teneretur et teneatur.*

⁵⁴ This was the enrolment of a letter patent, dated 27 May 1397, in Patent Roll 20, Ric. II, pt. 1, m. 12. It did not appear in the record of the proceedings in the *Rolls of Parliament*. Since there was so much falsification of records at this time, it cannot be regarded as altogether trustworthy. It says that judgement was passed on 7 February, but the *Rolls of Parliament* said that the prelates interceded for Thomas on Wednesday after Candlemas, after judgement had been rendered on Thomas in parliament (*Rot. Parl.*, III, 341, No. 23). In 1397 the Wednesday after Candlemas was 7 February, the same day that Thomas was condemned. The intervention of the prelates was thus very prompt. It is curious that the judgement of the Lords was not entered in the *Rolls*.

⁵⁵ *Ent toutes les dependences dicelles.*

ment, he has ordained and assigned . . . [eighteen persons named] to examine, answer and fully terminate *both* all the said petitions and the matters *contained in them, and all other matters and business moved in the presence of the king with all that arises from them which is not determined, according as* shall seem best to them, by their good advice and discretion in this matter, by authority of the parliament above said.

—Printed by J. G. Edwards in *E.H.R.*, XL (July 1925), 323, from *Rot. Parl.*, III, 368. The words italicized were added in 1399.

V. *Deposition of Richard II in the Assembly of 1399 according to the Rolls of Parliament.*⁵⁶

[1] Parliament was summoned and held at Westminster by King Henry IV on Monday, the day of St. Faith the Virgin . . . in the presence of the king seated on his royal throne in the great hall of Westminster, and of all the Lords spiritual and temporal, and of the Commons who had come thither by virtue of their summons to parliament, and of many other gentlemen and commoners there present in large numbers. Thomas of Arundel, archbishop of Canterbury, related how King Richard, the second after the Conquest had summoned his parliament to be held there on the previous Tuesday. . . . Which summons was without force and effect through the . . . abdication of the same King Richard, and through the deposition of Richard made on the aforesaid Tuesday, as more fully appears in the record and process drawn up in this connection and enrolled in this roll of parliament. . . .

Here follow the record and process of the abdication of King Richard, the second after the Conquest, and of the acceptance of the same abdication; likewise of the deposition of the same King Richard.

[10] Memorandum that on Monday on the feast of St. Michael the Archangel, the Lords spiritual and temporal and other notable persons . . . [here follow the names] . . . deputed for the following Act, came into the presence of Richard, at the Tower of London. The earl of Northumberland . . . recited before the king . . . how the king, at Conway in North Wales, whilst still at liberty, promised . . . that he was willing to renounce the Crown of England and France, and his royal majesty The said king replied willingly that he was ready to fulfil effectively what he had promised. . . .

⁵⁶ The numbers in square brackets are the paragraph numbers in the Rolls.

After some negotiations the said king willingly, as it appeared, and with smiling countenance, held the schedule [of abdication] in his hand and said that he wished to read it himself. He distinctly read it through, and absolved his lieges, renounced [the Crown] . . . and signed the schedule with his own hand.

[13] [The Schedule].

[14] [Richard then says that, if it were in his power, the duke of Lancaster should succeed to the throne. He gave Henry his signet seal, in token of this.] On the next day, in the great hall at Westminster, honourably prepared for the holding of parliament, in the presence of the archbishops of Canterbury and York, of the duke of Lancaster, of other dukes and lords both spiritual and temporal whose names are inscribed below, and of the people of the said kingdom then and there assembled in a very great multitude for the sake of the holding of parliament, the aforesaid duke of Lancaster occupied the place due and accustomed to his estate. The royal throne, solemnly prepared with cloth of gold, stood vacant in the absence of any presiding officer whatsoever. The archbishop of York . . . had the cession and abdication read, first in Latin and then in English. And immediately it was asked of the estates and the people then and there present . . . whether for their own interest and for the benefit of the kingdom, they wished to accept the same abdication and cession. The estates and people, considering, for the reasons specified by the king himself in his aforesaid abdication and cession, that to do so would be highly expedient, each one singly and then in common with the people, unanimously and with one accord accepted such renunciation and cession. After this acceptance, it was publicly set forth that, besides the abdication and cession accepted as aforesaid, it would in many ways be expedient and advantageous for the said kingdom if, in order to obviate all scruple and evil suspicion, the many crimes and defaults frequently committed by the said king in connection with the bad government of his kingdom—on account of which, as he himself had asserted in the cession made by him, he merited deposition—should be written down in the form of articles, to be publicly read and declared to the people. And so a large part of those articles was then publicly read, of which articles the tenor is as follows. . . .

[Then follows a copy of the coronation oath of Richard II. After this, the heading "There follows the indictments against the king for his deposition."]

[18]⁵⁷ In the first place the king is accused on account of his evil rule. He has given the goods and possessions of the Crown to unworthy persons and otherwise dissipated them indiscreetly. In consequence, he has without cause imposed contributions and other weighty and unbearable burdens on his people. He has perpetrated countless other evils. Furthermore, by his assent and command, certain prelates and other temporal lords were elected and assigned by the whole parliament, to govern the realm. These faithfully laboured with all their might at the just government of the realm, at their own expense. Nevertheless the king made a conventicle with his accomplices. He proposed to accuse of high treason the spiritual and temporal lords who were thus busily concerned with the welfare of the realm. In order to strengthen their evil design he violently compelled the justices of the kingdom, by fear of death and torture of body, to destroy the said lords.

[19] Also, the king caused the greater part of the justices to come secretly before him, and before others favouring him, at Shrewsbury. By various threats and terrors and also by the fears that can befall the inconstant, he induced, made and compelled them singly to reply to certain questions which were put to them on behalf of the king, touching the laws of his realm. This was contrary and opposed to their wish, and their replies were different from what they would have been, had they been free and not under compulsion. By colour of these replies, the king proposed to proceed later to the destruction of the duke of Gloucester and the earls of Arundel and Warwick and other lords. . . .

[20] The said temporal lords resisted and defended themselves against the king's malice and deceit. The king appointed a day for his parliament, in order to give justice in this matter. . . . The king secretly sent the duke of Ireland to the region of Chester with his letters and standard. Here he raised many men-at-arms. . . .

[21] Also the king, in full parliament and with its assent, pardoned the duke of Gloucester and the earls of Arundel and Warwick, and all those assisting them in their actions, for all offences which they had committed. For many years, he showed a friendly and benign face and signs of peace and love to the said duke and earls; but he nevertheless always and continually carried venom in his heart. At length, seizing his opportunity . . . he caused the said duke of Gloucester . . . and earls of Arundel and Warwick to be seized

⁵⁷ This is the first of the articles of indictment.

and arrested, and the said duke . . . secretly to be . . . murdered. He caused the earl of Arundel to be damnably beheaded, . . . in his parliament which he had caused to be surrounded by an immense number of men-at-arms and archers, in order to impress the people whom he had summoned to it. He ordered the earl of Warwick and lord Cobham to perpetual imprisonment. . . .

[22] Also . . . he attached to himself a great multitude of malefactors of the county of Chester. . . .

[23] Also . . . many of the household of the said lords and of others, who had assembled and ridden in their following at the time of the uprising he compelled, (in spite of his promise not to) by fear of death, to make fines and redemption, as though they were traitors. . . .

[24] Also, when many of these people, making these fines and redemptions, sought their letters patent of full pardon from the king, concerning the above, they could get no advantage from these letters of pardon, until they had paid new fines and redemptions, to save their lives. . . .

[25] Also, in the parliament recently held at Shrewsbury the same king, proposing to oppress his people, subtly procured and caused it to be granted that, by the counsel of all the estates of his realm, the power of parliament to decide certain petitions which had been presented in the same parliament but on which no progress had as yet been made, should devolve upon certain persons. By colour of which concession the persons thus deputed proceeded with other matters generally touching that parliament—and this at the will of the king and in derogation of the estate of parliament, to the great damage of the entire kingdom. . . . And in order that [these persons] might seem to have a certain colour of authority for such deeds, the king had the rolls of parliament deleted and changed to suit himself and contrary to the terms of the aforesaid concession. . . .

[27] Also, although the Crown of the realm of England and the rights of the said Crown and the kingdom have, for all time past, been so free that neither the lord high pontiff nor any one else outside the kingdom ought to intermeddle in the same, nevertheless the said king, in order to strengthen his erroneous statutes, begged the lord pope that he would confirm by his ordinance the statutes ordained in the last parliament. . . .

[28] [At the time of the duel between Lancaster and Norfolk he had interfered and exiled the former for ten years, against all justice

and against the laws and customs of his realm, and against the *jura militaria*.]

[29] [He had revoked the letters patent by which Lancaster had been granted the right to inherit his estates by attorney in his absence.]

[30] [He had prevented free election of sheriffs and had ordered those to be elected whom he knew would not resist his will.]

[32] Also, the king of England was able, without oppressing his people, to live honourably from the issues of his kingdom and from the patrimony belonging to his crown, when the kingdom was not burdened with the expense of wars. Yet the same king, while truces between him and his adversaries continued during almost his entire reign, gave the greater part of his said patrimony to unworthy persons. He also, because of this, threw such burdens of taxation on his subjects in nearly every year of his reign that he widely and outrageously oppressed his people, to the impoverishment of his kingdom. The income thus obtained was not used for the benefit and advantage of the kingdom of England, but was prodigally dissipated for the sake of his own ostentation, pomp, and vainglory. Great sums of money were owed in his kingdom for the victuals of his household and other purchases of his, although, more than any of his progenitors, he enjoyed an abundance of treasure and riches.

[33] Also, the same king refused to keep and defend the just laws and customs of his kingdom, but [wished] at his own arbitrary will to do whatever appealed to his desires. Sometimes—and when the laws of the kingdom had been declared and explained to him by his justices and others of his council and when, according to those laws, he was to administer justice to those seeking it—he expressly said, with an austere and determined countenance, that his laws were in his own mouth, or occasionally, in his own breast; and that he alone could establish and change the laws of his realm.

[34] Also, after certain statutes had been published in his parliament, which should always bind until specially revoked by the authority of some later parliament, the same king desired to enjoy such a large freedom that no such statutes should bind him to the extent that he could not act and do according to his free will. He subtly procured, as he had no power to do, that such a petition should be made by the Community of the Realm in parliament, and should be conceded by him in such a way, that he should be as free as any of his ancestors before him. By colour of which petition

and concession, the said king frequently did and ordered many things to be done against the statutes which had never been revoked. He often went knowingly and expressly against his coronation oath.

[35] [He continued sheriffs in office longer than their legal term.]

[36] [The election of knights of the shire ought to be free, but the king sent mandates to the sheriffs directing them to cause the king's nominees to be sent to parliament. The king was able to get the support of these knights for his unjust exactions, especially for the grant of the subsidy on wool for life.]

[37] [The king caused sheriffs to swear more than their traditional oath, and especially that they would obey all his commands, under great and privy seals, and also letters under his signet. The sheriffs were to arrest any of their bailiffs who spoke to the dishonour of the king's person.]

[38] [The king, striving to suppress his people, caused the people of seventeen counties to submit to him as traitors, by letters under their seals. By colour of these letters he extracted from them a great sum of money.]

[39] [He extracted large sums of money from Abbots and Priors, for his expedition to Ireland.]

[40] Also, in many great councils of the king, the Lords of the kingdom and the justices and others were charged that they would faithfully counsel the monarch in matters touching his estate and that of the kingdom. But the same Lords, justices and others were frequently so suddenly and fiercely upbraided and reproved by the king, for giving counsel according to their discretion, that they dared not tell the truth. . . .

[41] [The king took the treasures and jewels of the realm to Ireland with him, without the consent of the "estates."]

[42] Also, the king was almost always so variable and deceitful in his words and writing, and these were always so contradictory (especially in writing to Pope and kings, and to lords both within and outside the realm, as well as to his subjects) that practically nobody living, who knew of his condition, would be able, or would wish, to trust him. He is always reputed so fickle and inconstant that it creates scandal not only to his person, but also to all the realm, and especially with foreigners of all the world who have knowledge of it.

[43] Also, the lands, tenements, goods and chattels of every freeman, according to the laws of the realm accustomed throughout all

times past, ought not to be seized unless they have been [lawfully] forfeited. Nevertheless the king proposed and determined to undo such laws. In the presence of very many lords and of other men from the commonalty of the realm, he often said and affirmed that the life of every one of his lieges, together with the lands, tenements, goods, and chattels of such men, was subject to his own pleasure, apart from any [lawful] forfeiture. This is wholly contrary to the laws and customs of his kingdom.

[44] Also, although it is established and ordained 'that no freeman shall be seized, etc., or in any way destroyed, and that the king will neither go against him nor send against him, except by the lawful judgement of his peers, or by the law of the land'; nevertheless, by the will, mandate, and order of the king, very many of his lieges were maliciously accused of having publicly or secretly said something that might lead to the slander, shame, or humiliation of the king's person, and were seized and imprisoned and taken to a military court before the constable and marshal of England. In which court the lieges who had been accused could not be admitted unless they replied that they were not guilty of anything and that they would justify and defend themselves by their bodies and not otherwise; notwithstanding the fact that their accusers and appellants might be young men who were strong and well, and those accused old and weak, mutilated or infirm. . . . Wherefore, since the aforesaid king wilfully contravened this statute of his realm, it is not to be doubted that he thereby committed perjury.

[45] The people of the realm of England are fully held and bound to the king by the strength of their allegiance. The king has enough force to correct and punish his people, by the laws and customs of the realm, if in any manner they go astray. Nevertheless, the said king desired to subdue and oppress his people, so that he might more freely follow and pursue the foolish and unlawful dictate of his will. By his letters, directed to every county of the realm, he instructed and commanded his lieges, both spiritual and temporal, to take certain oaths of a kind most hateful to them, which truly might cause the final destruction of his people. They were to authenticate these oaths by their seals. . . .

[46] [The king forbade ecclesiastical courts by writs of prohibition.]

[47] [He exiled Archbishop Arundel, against the laws of his realm.]

[48] [The king left money in his will to his successor] so long as he may approve, ratify, and confirm, hold, cause to be held, and firmly observe, all and singular of the statutes, ordinances, establishments and judgements which were done, promulgated, and restored⁵⁸ in the parliament . . . at Westminster [17 September 1397] . . . and Shrewsbury, and also the ordinances . . . [etc.] . . . made . . . at Coventry . . . and Westminster [16 September 1398 and 18 March 1399] by authority of the said parliament . . . and also all other ordinances and judgements which shall happen to be made in future by authority of the said parliament.⁵⁹ . . .

[51] It seemed to all those estates who were thereupon interrogated, singly and in common, that those statements (*causae*) of crimes and defaults were adequate enough and sufficiently notorious for deposing the same king. They considered also his confession regarding his insufficiency and regarding other matters contained in the said renunciation and abdication, openly published. And all the aforesaid estates unanimously agreed that there was abundant reason for proceeding to deposition, for the greater safety and tranquility of the people and for the good of the kingdom. Therefore the estates and commons⁶⁰ unanimously and in accord publicly constituted and deputed certain commissioners, the Bishop of St. Asaph . . . etc. . . . then present, to bear this sentence of deposition, and to depose king Richard from all the king's dignity, majesty and honour, in lieu of, by name of, and by authority of all the aforesaid estates, as in similar cases had been observed according to the ancient custom of the realm.

These commissioners . . . sat as a tribunal before the said royal throne. They held some deliberation beforehand, over these things, and reduced the sentence of deposition to writing. And in lieu of, in the name of and by authority of, as aforesaid, they pronounced the sentence and caused it to be read and recited by the bishop of St. Asaph their fellow-commissioner and colleague, by the wish and mandate of the commissioners, in the following words.

We . . . have been specially deputed commissioners for what is written below, by the peers and magnates of the realm of England, spiritual and temporal, and by the *communitates* of the realm, representing all the estates of the realm. Sitting as a tribunal,⁶¹ we have regarded the many perjuries and the cruelty and many other

⁵⁸ The phrase is *facta, lata et reddita*.

⁶⁰ *Status et communitates predicti*.

⁵⁹ *Auctoritate ejusdem parlamenti*.

⁶¹ *Pro tribunali sedentes*.

crimes of the said Richard, committed and perpetrated in his rule in the realm and dominion aforesaid, during the period of his rule, which had been openly and publicly put forward, shown and recited, before the said estates, which are and were so public, notorious, manifest and infamous, that they cannot be hidden by any deviousness. We have regarded the confession of the said Richard recognizing and deeming and indicating, truly and out of his certain knowledge, that he was, and is, entirely insufficient and useless for the ruling and governing of the realms and dominion aforesaid and of their pertinances, and not undeserving to be deposed. This confession was previously given out by Richard himself, and published by his wish and before the said estates, and notified and set forth before them in the vernacular.

We the commissioners, have held diligent discussion on these and all matters pleaded before the aforesaid estates and ourselves. And by virtue of the authority conferred upon us in this matter, in lieu of and in the name of [the estates],⁶² we pronounce, resolve and declare the said Richard *ex habundanti et ad cautelam*, to have been and to be useless, unfit for, and entirely insufficient and unworthy of, the rule and government of the said realms and dominion and of the rights and pertinances of them. We declare that he is rightfully to be deposed, on account of the foregoing and by reason of them, from all dignity and royal honour, if anything of this dignity and honour remains in him, and we depose him *simili cautela* by our definitive sentence in these writings, to one and all.

We expressly forbid magnates, archbishops, bishops and prelates, dukes, marquises, earls, barons, knights, vassals, and vavasours and other men of the realms and dominion and other places pertaining to the said realms and dominion, and all subjects and lieges whatsoever, or any one of them, from obeying and in any way being intendant upon the said Richard as king or lord of the said realms or dominions.

[53] The aforesaid estates wished that nothing should be missing that was necessary and proper and requisite to the foregoing. They were thereupon interrogated singly; and they instituted the persons who had been nominated as commissioners, to be their proctors . . . to resign . . . homage and fealty to Richard And immediately, when Henry Duke of Lancaster knew from, and by occasion of, the above, that the kingdom of England with its pertinances

⁶² *Vice nomine et auctoritate nobis in hac parte commissa.*

was vacant, he rose from his place and stood sufficiently erect that he could be well seen by the people. He humbly made the sign of the cross, before and behind, and invoked the name of Christ. Then he claimed the said realm of England, thus vacant as above said, together with the Crown and all its members and pertinances, speaking in his mother tongue, in this form of words:

In the name of Fadir, Son and Holy Gost, I Henry of Lancastre chalenge yis Rewme of Yngland, and the Corone with all ye membres and ye appurtenances, als I yt am disendit be right lyne of the Blode, comyng fro the gude lorde Kyng Henry Therde, and thorghe yat ryght yat God of his grace hath sent me, with helpe of of my Kyn and my Frendes to recover it: the whiche Rewme was in poynt to be undone for defaut of Governance and undoyng of the gode Lawes.

—From *Rot. Parl.*, III, 415–23, partly translated by Adams and Stephens, *Select Documents*, 162–5.

VI. *The Deposition of Richard II according to Thomas of Walsingham*

At that time John Duke of Lancaster died. His body was buried in the church of St. Paul, London.

After his death, the king decreed perpetual exile to Henry his son, whom he had previously banished for ten years. He revoked his general letters patent, which he had previously conceded, to the effect that, in Henry's absence under banishment, his general attorneys could treat for the handing over of any inheritance or successions falling to him, and that his homage could be respited by payment of a reasonable fine. By which deed the king made it abundantly clear that he did not sincerely love the Duke of Hereford, and had not banished him on account of the dissensions which might have arisen between his followers and those of the Duke of Norfolk, as had been pretended, but for the opportunity of seizing the goods of the duke, as many declared. Meanwhile the king borrowed large sums of money from a number of lords, both temporal and spiritual, and from other persons in the kingdom. He promised them in good faith, in letters patent, that he would repay the money thus borrowed within the stipulated time; but he never afterwards repaid these creditors.

In the same year he exacted large sums of money from seventeen counties of the realm, by fear of death. He placed those who stood against him in the same category as the duke of Gloucester and the

earls of Arundel and Warwick, etc., and was ready to ride against them as against public enemies. Wherefore he received a new pledge of security from those counties, strengthened by an oath. Having done this, he sent certain bishops to those counties with other distinguished men; who persuaded both the lords spiritual and the lords temporal, with all the men of middle weight of the counties, to submit to the king, and certify themselves . . . by letters under their seals. By occasion of this, the clergy, the common people, and the temporal lords of the counties were driven to concede unbearable sums of money to the king, to recover his favour.

Since he desired, as it is said, to crush and oppress the people of his realm, he sent letters patent to every shire of the realm, and through terror constrained that all his liege subjects, both temporal and spiritual, should take oaths which were unusual in kind, and which truly would cause the final destruction of his people; and he compelled his liege subjects to confirm these oaths by their letters, under their seals. He also compelled his subjects to place their seals on blank charters, so that as often as he wished to proceed against them, he had the power to oppress them, singly or collectively.

He also caused the sheriffs throughout the kingdom to take new oaths, beyond those customary, that they would obey all the mandates of the king, whenever these were directed to them under the great or the privy seal, and also in the form of letters under the signet seal. And if the sheriffs should know anybody in their bailiwicks, of whatever condition, who said or spoke, whether publicly or in private, any evil word which might bring shame or scandal to the king's person, they should imprison him until they should be directed otherwise by the king's mandate. Whence it befell that several liege subjects of the king were maliciously accused of saying⁶³ something publicly or in private which might give rise to censure, scandal or dishonour with regard to the person of the king; and they were seized and imprisoned and brought before the Constable and Marshal of England in the military court. They could not obtain their release in any other way than by justifying themselves and defending themselves bodily in trial of battle, notwithstanding the fact that their accusers and appellants were strong and healthy youths, and those who were accused were for the most part feeble old men, maimed and infirm. From this there was truly feared not

⁶³ *Quod debuissent dixisse.*

only great destruction of the realm, but also of all and singular within the community.

About Whitsuntide, the king left the kingdom which was, as described above, beset by widespread disturbances. He crossed into Ireland, accompanied by his Cheshire men and by certain magnates of the realm, namely, by the dukes of Albemarle and of Exeter and by many others. And he led with him boys from the nobility, namely the sons of the duke of Gloucester and the duke of Hereford, whose relatives he particularly feared. He also took with him many bishops, together with the abbot of Westminster. These were at hand to confirm for their part those things which were to be enacted, whenever he wished parliament to do, with the assent of eight persons, something which he had previously determined. When he departed for Ireland, he also took with him the treasury and the relics and other jewels and riches of the kingdom, which were traditionally left in the treasure-vaults of the kingdom for the honour of the kings. And he did this without the consent of the estates of the realm. When he came to Ireland, he seemed at first to prosper and to be established against his enemies. But the inhabitants of his own kingdom did not greatly rejoice over that; they felt ever worse about him, and feared that they would be more gravely oppressed by him.

Meanwhile, duke Henry, formerly of Hereford and now of Lancaster, by paternal right, bore his banishment hardly, but much more hardly his exile and disinheritance. He considered the king to be unjust to all his liege subjects for the reasons given above, and he seized the opportunity of the king's absence and arranged to return to England to seek his heritage. He associated with him Thomas Arundel, formerly archbishop of Canterbury and the son and heir of the earl of Arundel, who had long supported him. He crossed the sea with a very moderate following; he had not with him—to speak the common idiom—more than fifteen lances, although he could have had a much larger band. So much did he trust in his own right and in the favour of the people! Nevertheless, he did not wish to enter the country directly or suddenly; but he appeared before the people of the country, now in one part of the country, now in another, so that he might see if any resistance to him was being prepared in the parts near the coast.

The custody of the kingdom had been given, in the king's absence, to Edmund duke of York, the king's paternal uncle. When he

[Edmund] heard that the duke of Lancaster already held the sea and was ready to enter into the country, he summoned the chancellor, Edmund Stafford bishop of Chichester, the treasurer William Scrope earl of Wiltshire, and the knights of the king's council, John Bushy, William Bagot, Henry Green and John Russell. He enquired what should be done in this situation. They advised that he should move from London to St. Albans, there to await a force which could resist the advancing duke; but the outcome of events was to show how foolish was this counsel on their part. For those who came there, from many districts, protested that they did not wish to injure the duke of Lancaster, whom they knew to have been badly treated.

The evil councillors, John Bushy, William Bagot, Henry Green, and the treasurer William Scrope, realised now that the community would support the duke of Lancaster. They left the keeper of the land and the chancellor and fled hurriedly to Bristol Castle. The duke of Lancaster, for his part, landed unopposed, about the feast of the translation of St. Martin, near the spot where stands the town of Ravenspur. Henry Percy earl of Northumbria [*sic*], Henry his son, Ralph Neville earl of Westmoreland and very many other nobles, who feared the tyranny of the king, rode to meet him. In a short time, an army was collected which numbered sixty thousand warriors. They all, in complete agreement, determined that they should first pursue the above-mentioned evil councillors of the king. They marched to Bristol quickly, and besieged the castle because it was being prepared for defence. In the end, they captured here the treasurer William Scrope, John Bushy, and Henry Green, who were beheaded the next day, to the clamor of the commons. Alone of the councillors, William Bagot escaped, sailing to Ireland. He had not gone with his colleagues to Bristol, but had fled to hide in Chester.

When king Richard, in Ireland, heard of the duke's arrival in England, he immediately shut up the son of the duke of Gloucester and the son of the duke of Lancaster in the castle of Trim, which is in Ireland and is quite strong. Then he quickly prepared to sail, with the dukes of Albemarle, Exeter and Surrey and the bishops of London and Carlisle and many others, so that he might meet the duke with an armed force before the latter had gathered his supporters together.

But when he had reached England and learned of the duke's preparations, he lost heart for fighting. He knew for certain that the

people who had gathered against him would rather die than yield, on account of both hatred and fear of him. He therefore dismissed his following, advising them through his steward Thomas Percy that they should keep themselves ready for better times. The king himself, seeking the frontiers, wandered here and there for many days, with the duke and his army always pursuing. At length, while he was at Conway castle, since there was no hope of further flight, he sought a colloquy with Thomas Arundel, whom he had expelled from the archbishopric of Canterbury, and with the earl of Northumbria.

To these people, he indicated that he would yield the kingdom if an honourable condition of living and security of life were granted him, assured by the pledge of faith of eight persons whom he would name. When these conditions had been granted and confirmed, he came to the castle of Flint. Here, he and the duke of Lancaster had a brief talk; and then, mounting on horse-back, they journeyed that night to the castle of Chester, together with the large army which had followed the duke. This was the 20 August and the 47th day from the entry of the duke into England. The treasury of the king, with horses and other equipment and the furniture of all the household, fell into the hands of the duke; but the followers of the king, magnates, lords and lesser folk, were despoiled by the Welsh and Northumbrians. The king himself was led to London, to be kept in the Tower until the meeting of the next parliament.

Meanwhile, writs were sent to the people of the realm who ought, by right, to be present in parliament, directing them, in the name of king Richard, to meet in London, at Westminster, on the morrow of St. Michael's. When they had met, on the same day of St. Michael, in the Tower of London, king Richard voluntarily, as it appeared, and with a cheerful countenance, read through, in a clear voice, the form of his renunciation [of the crown before Thomas Arundel archbishop of Canterbury, and many others, including Henry earl of Northumbria]. He absolved his lieges from their oath of fealty and homage, and loosened them from all other oaths whatsoever. He renounced and yielded to his lords the things that are more fully contained in the form of abdication.⁶⁴ He declared these things and published them in writing, signed beneath with his own hand. And he immediately added that he wished the duke of Lancaster to succeed him in the kingdom. But because this was not within his power, the archbishop of York and the bishop of Hereford made

⁶⁴ *Et suis dominis renunciavit et cessit.*

themselves his proctors for the time being, in order to declare and intimate his abdication and renunciation to all the said estates of the realm.

The day after, in the great hall at Westminster, the royal throne being then empty, without any president whatsoever, the proctors of king Richard publicly declared the abdication and renunciation of the king, to all the estates of the realm then united. And each one present being asked in turn, all unanimously and in agreement allowed this abdication and renunciation.

Then it was publicly proclaimed that it was expedient and useful to the realm, in order to allay all scruples and sinister suspicion, that many crimes and defects, frequently committed by the said king pertaining to the evil government of his kingdom should be publicly read.⁶⁵ On account of these, as the king himself declared in the renunciation [of the throne] which he himself made, he might rightfully be deposed.⁶⁶ These should also be declared to the people. The articles, numbering 32, were therefore read. They finally established the violations of the royal oath. And since it seemed to all the estates of the realm, interrogated singly and also in common regarding the said articles, that these crimes⁶⁷ were sufficient and notorious for deposing the king, commissioners were ordained on the part of the estates and community of the realm, to bear the sentence of deposition against the king, in the form which follows: [Then follows the deposition of Richard and the claim of Henry of Lancaster to the throne as given in the *Rot. Parl.* and printed above.] After which claim the lords, both spiritual and temporal, and all the estates of the realm conceded unanimously that the said duke should rule over them.

—From the *Historia Anglicana* of Thomas Walsingham, ed. H. T. Riley (R.S., 1864), II, 230-7.

VII. *Extracts from the Chronicle of Adam of Usk on Richard II's deposition*

Next, the matter of setting aside king Richard, and of choosing Henry, duke of Lancaster, in his stead, and how it was to be done and for what reasons, was judicially committed to be debated by

⁶⁵ The editor has adopted the variation *a populo*, but the variation *publice* in MS. (1) seems to be better.

⁶⁶ *Esset ipse merito deponendus*. Richard was not yet deposed; he had only, so far, voluntarily renounced his crown.

⁶⁷ *Causae criminum*.

certain doctors, bishops, and others, of whom I, who am now noting down these things, was one. And it was found by us that perjuries, sacrileges, unnatural crimes, oppression of his subjects, reduction of his people to slavery, cowardice and weakness of rule—with all of which crimes king Richard was known to be tainted—were cause enough for setting him aside, in accordance with the chapter: “Ad apostolicæ dignitatis,” under the title: “De re judicata,” in the Sextus;⁶⁸ and although he himself was ready to yield up the crown, yet was it determined, for the aforesaid reasons, that he should be deposed by the authority of the clergy and people, for which purpose they were summoned.

On St. Matthew’s day (21st September), just two years after the beheading of the earl of Arundel, the writer of this history was in the Tower, wherein king Richard was a prisoner, and was present at his dinner. I marked his mood and bearing, having been taken thither for that very purpose by Sir William Beauchamp.⁶⁹ And there and then the king discoursed sorrowfully in these words: “My God! a wonderful land is this, and a fickle; which hath exiled, slain, destroyed, or ruined so many kings, rulers, and great men, and is ever filled and toileth with strife and variance and envy”; and then he recounted the histories and names of sufferers from the earliest habitation of the kingdom. Perceiving then the trouble of his mind, and how none of his own men, nor such as were wont to serve him, but strangers who were but spies upon him, were appointed to his service, and musing on his ancient and wonted glory and on the fickle fortune of the world, I departed thence much moved at heart. . . .

On St. Michael’s day there were sent to the king in the Tower, on behalf of the clergy, the archbishop of York and the bishop of Hereford; on behalf of the superior lords temporal, the earls of Northumberland and Westmoreland; for the lower prelates, the abbot of Westminster and the prior of Canterbury; for the barons, the lords Berkeley and Burnell; for the lower clergy, master Thomas Stow and John Borbach; and for the commons of the kingdom, sir Thomas Grey and sir Thomas Erpingham, knights, to receive the

⁶⁸ *Liber sextus Decretalium*, II, tit. xiv. § ij. This was the decree of deposition passed at the council of Lyons in 1245 by Pope Innocent IV, against the Emperor Frederick II (editor’s note).

⁶⁹ Sir William Beauchamp, distinguished as a soldier and sea-captain, became Lord Bergavenny in 1392. He died in 1410 (editor’s note).

surrender of the crown from king Richard. And when this was done, on the morrow, the said lords, on behalf of the whole parliament and the clergy and the people of the kingdom, altogether renounced their oath of allegiance, loyalty, submission, service and obedience, and their fealty to him. They set him aside, holding him henceforth not for king, but for a private person, sir Richard of Bordeaux, a simple knight. They took away his ring in token of deposition and deprival, and brought the same to the duke of Lancaster, delivering it to him in full parliament on that day assembled. On the same day the archbishop of York delivered first an address on the text: "I have set my words in thy mouth." Then, having been made by king Richard his mouthpiece, he used the first person, as though the king himself were speaking, and read in full parliament the surrender of his royal rank and the release of all his lieges and subjects whomsoever from all submission, fealty, and homage. This was openly and publicly drawn up in writing. And this surrender, the consent of all and every in parliament being first called for, was openly and distinctly accepted. Which being done, my lord archbishop of Canterbury made an address on the text: "A man shall reign over my people." In this, he highly lauded the duke of Lancaster, his strength, his understanding and his virtues, which rightly exalted him to be their king. And among other things, he spoke of the shortcomings of king Richard, and specially how he had most unjustly stifled his uncle, the duke of Gloucester, in prison (treacherously, and without a hearing or leave to answer); and how he strove to overthrow the law of the land to which he had sworn.⁷⁰ And so, in short, although he had sufficiently made resignation, the sentence of his deposition (drawn up in writing, by consent and authority of the whole parliament) was there openly, publicly, and solemnly read by master John Trevour of Powis, bishop of St. Asaph. And so, the throne being vacant, by consent of the whole parliament, the said duke of Lancaster was raised up to be king. He forthwith had enthronement at the hands of the said archbishops. Then, seated on the king's throne, he straightway openly and publicly read a certain declaration in writing. In this it was set forth that he, seeing the kingdom of England to be vacant, did claim and take upon himself the crown by right by lawful right of succession by descent from the body of

⁷⁰ This sermon was not delivered by the Archbishop till after he had enthroned Henry; *Rot. Parl.*, III, 423 (editor's note).

king Henry the third;⁷¹ and that, in virtue of such succession or conquest, he would in no wise allow the state of the kingdom nor of any man to suffer change in liberties, franchises, inheritances, or in any other right or custom.

—From the *Chronicon Adae de Usk*, ed. E. M. Thompson (London, 1876), 29–32. The translation above follows that of the editor (pp. 141–46), with slight changes.

VIII. *Hardyng on Henry IV's Accession*

Then swore the duke upon the sacrament,
To claime no more but his mothers heritage,
His fathers landes, and his wifes in good entent,
And to laye downe both taxe and tallage
Whiles he might live but of the baronage

.
In this meane whyle therle of Northumberlande
Treated with the kyng that tyme in Conweye,
To mete with duke Henry then in Englande,
And brought hym then to hym in meke araye,
With litell speache to Chester then the waye,
They rode anone and put hym there in warde,
And so to London from thens came southwarde.

And set hym in the toure, where he resigned
His right, his realme and his royall croune
to duke Henry . . .
The parliament then, for his misgouvernaunce
Deposed hym so then by greate ordinaunce.

Therle of Northumberlande then had sent
His power home by counsell of duke Henry,
So did his sonne Henry that truly ment,
Supposyng well the duke wolde not vary
From his othe, ne in no wysé contrary,
And he and his kepte all theyre power,
[Tyll he was crowned] kyng, as [it] did appere.

⁷¹ Henry's challenge of the Crown was made before his enthronement; *Rot. Parl.*, III, 422 (editor's note).

Therles two then of Northumberlande,
 Of Worcester, and syr Henry Percy,
 And therle also of Westmerlande
 Councelled hym then fro his othe not to varye,
 And though at eve he did to them applie,
 On the morowe by a pryve counsayl,
 He would be crouned kyng without fayle.

Hardyng's Note

"For asmuche as many men mervaille gretely why the erle of Northumberlande and Sir Henry Percy his furst gotyn sonne, and sir Thomas Percy erle of Worcestre, were supportours to king Henry the fourth, to have his heritage and to take kynge Richarde to have depose hym be stronge honde, truly I, the maker of this boke, wase brought up fro twelve yere of age in sir Henry Percy house to the bataille of Shrewsbury, wher I wase with hym armed of XXV^{ti} yere of age . . . and knewe his entent and hade it wretyn. . . . And . . . I herde the said erle saie, that the seid kynge Henry made Kynge Richarde under dures of prison in the toure of London in fere of his life to make a resignation of his right to hym. And upon that a renunciation of the seide right. And tho two [i.e. the two Percys] declared in the counsell and in the parlement at Westmynster, on the morowe of seynt Michell than next followynge, what of his myght and wilfulness, and what be certeyne lordes and strenght of the commons, he wase crounde ayenst his oth made in the White ffreres at Doncastre to the seid erle of Northumberlonde and other lordes, ayenst the wille and counsell of the seide erle and of his sonne, and of Sir Thomas Percy erle of Worcestri, for which cause they died after, as I knew well, for that tyme I was in the feelde at Shrewsbury with Sir Henry Percy . . ."

—From John Hardyng's *Chronicle*, ed. Henry Ellis (London, 1812),
 353.

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